COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION

9VAC5 CHAPTER 80.
PERMITS FOR STATIONARY SOURCES.

Part II.
Permit Procedures.

ARTICLE 3.
Federal Operating Permits for Acid Rain Sources.

applicable state requirements in the permit.

9VAC5-80-705. [Repealed.]

9VAC5-80-360. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to any affected source that has an affected unit under the provisions of 9VAC5-80-380.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article shall not apply to the following:

1. Any new unit exempted under 9VAC5-80-390.

2. Any affected unit exempted under 9VAC5-80-400.

3. Any emissions unit that is determined to be shutdown under the provisions of 9VAC5-20-220.

D. Regardless of the exemptions provided in this section, permits shall be required of owners who circumvent the requirements of this article by causing or allowing a pattern of ownership or development of a source which, except for the pattern of ownership or development, would otherwise require a permit.

E. Particulate matter emissions shall be used to determine the applicability of this article to major sources only if particulate matter (PM_{10}) emissions cannot be quantified in a manner acceptable to the board.

9VAC5-80-370. Definitions.

As used in this article and related permits and orders issued by the board, all words and terms not defined herein shall have the meaning given them in 9VAC5 Chapter 10 (9VAC5-10-10 et seq.), unless the context clearly indicates otherwise; otherwise, words and terms shall have the following meaning:

"Acid rain compliance option" means one of the methods of compliance used by an affected unit under the acid rain program as described in a compliance plan submitted and approved in accordance with 9VAC5-80-450 or 40 CFR Part 76.

"Acid rain compliance plan" means the document submitted for an affected source in accordance with 9VAC5-80-430 specifying the method or methods (including one or more acid rain compliance options under 9VAC5-80-450 or 40 CFR Part 76) by which each affected unit at the source will meet the applicable acid rain emissions limitation and acid rain emissions reduction requirements.

"Acid rain emissions limitation" means:

1. For the purposes of sulfur dioxide emissions:

a. The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under §§ 404(a)(1), (a)(3), and (h) of the federal Clean Air Act, or the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year, or the allowances authorized to be allocated to an opt-in source under § 410 of the federal Clean Air Act for use in a calendar year;

b. As adjusted:

(1) By allowances allocated by the administrator pursuant to § 403, § 405(a)(2), (a)(3), (b)(2), (c)(4), (d)(3), and (h)(2), and § 406 of the federal Clean Air Act;

(2) By allowances allocated by the administrator pursuant to Subpart D of 40 CFR Part 72; and thereafter

(3) By allowance transfers to or from the compliance subaccount for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in 40 CFR 73.35, after deductions and other adjustments are made pursuant to 40 CFR 73.34(c); and

2. For purposes of nitrogen oxides emissions, the applicable limitation established by 40 CFR Part 76, as modified by an acid rain permit application submitted to the board, and an acid rain permit issued by the board, in accordance with 40 CFR Part 76.

"Acid rain emissions reduction requirement" means a requirement under the acid rain program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.

"Acid rain permit or permit" means the legally binding written document, or portion of such document, issued by the board (following an opportunity for appeal pursuant to 40 CFR Part 78 or the Administrative Process Act), including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

"Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the federal Clean Air Act, 40 CFR Parts 73, 74, 75, 76, 77, and 78, and this article.

"Acid rain program regulations" means regulations implementing Title IV of the federal Clean Air Act, including 40 CFR Parts 73, 74, 75, 76, 77, and 78, and this article.

"Actual sulfur dioxide emissions rate" means the annual average sulfur

dioxide emissions rate for the unit (expressed in lb/mmBtu), for the specified calendar year; provided that, if the unit is listed in the NADB, the "1985 actual sulfur dioxide emissions rate" for the unit shall be the rate specified by the administrator in the NADB under the data field "SO2RTE."

"Administrative record" means the written documentation that supports the issuance or denial of the acid rain permit and that contains the following:

1. The permit application and any supporting or supplemental data submitted by the designated representative.

2. The draft permit.

3. The statement of basis.

4. Copies of any documents cited in the statement of basis and any other documents relied on by the board in issuing or denying the draft permit (including any records of discussions or conferences with owners, operators, or the designated representative of affected units at the source or interested persons regarding the draft permit), or, for any such documents that are readily available, a list of those documents and a statement of their location.

5. Copies of all written public comments submitted on the draft permit or denial of a draft permit.

6. The record of any public hearing on the draft permit or denial of a draft permit.

7. The acid rain permit.

8. Any response to public comments submitted on the draft permit or denial of a draft permit and copies of any documents cited in the response and any other documents relied on by the board to issue or deny the acid rain permit, or, for any such documents that are readily available, a list of those documents and a statement of their location.

"Affected source" means a source that includes one or more affected units.

"Affected states" means all states (i) whose air quality may be affected by the permitted source and that are contiguous to Virginia or (ii) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation. Affected units are specifically designated in 9VAC5-80-380.

"Allocate or allocation" means the initial crediting of an allowance by the administrator to an allowance tracking system unit account or general account.

"Allowable emissions" means the emission rates of an affected source calculated by using the maximum rated capacity of the emissions units within the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate or hours of operation of both) and the most stringent of the following:

1. Applicable emission standards.

2. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date.

3. Any other applicable emission limitation, including those with a future compliance date.

"Allowance" means an authorization by the administrator under the acid rain program to emit up to one ton of sulfur dioxide during or after a specified calendar year.

"Allowance deduction" or "deduct" (when referring to allowances) means the permanent withdrawal of allowances by the administrator from an allowance tracking system compliance subaccount, or future year subaccount, to account for the number of the tons of sulfur dioxide emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in 40 CFR Part 75, or for any other allowance surrender obligations of the acid rain program.

"Allowances held or hold allowances" means the allowances recorded by the administrator, or submitted to the administrator for recordation in accordance with 40 CFR 73.50, in an allowance tracking system account.

"Allowance tracking system" means the acid rain program system by which the administrator allocates, records, deducts, and tracks allowances.

"Allowance tracking system account" means an account in the allowance tracking system established by the administrator for purposes of allocating, holding, transferring, and using allowances.

"Allowance transfer deadline" means midnight of January 30 or, if January 30 is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected unit's compliance subaccount for the purposes of meeting the unit's acid rain emissions limitation requirements for sulfur dioxide for the previous calendar year.

"Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

1. Any standard or other requirement provided for in the implementation plan, including any source-specific provisions such as consent agreements

or orders.

2. Any term or condition of any preconstruction permit issued pursuant to the new source review program or of any operating permit issued pursuant to the state operating permit program, except for terms or conditions derived from applicable state requirements.

3. Any standard or other requirement prescribed under Regulations for the Control and Abatement of Air Pollution, particularly the provisions of 9VAC5 Chapter 40 (9VAC5-40-10 et seq.), 9VAC5 Chapter 50 (9VAC5-50-10 et seq.), or 9VAC5 Chapter 60 (9VAC5-60-10 et seq.), adopted pursuant to requirements of the federal Clean Air Act or under § 111, § 112 or § 129 of the federal Clean Air Act.

4. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

5. Any standard or other requirement of the acid rain program under Title IV of the federal Clean Air Act or the acid rain program regulations.

6. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act or Regulations for the Control and Abatement of Air Pollution.

7. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

8. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

9. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

10. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

"Applicable requirement" means any applicable federal requirement or any applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-700.

"Applicable state requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future-effective compliance dates):

1. Any standard or other requirement prescribed by any regulation of the board that is not included in the definition of applicable federal requirement.

2. Any regulatory provision or definition directly associated with or related to any of the state requirements listed in this definition.

"Authorized account representative" means a responsible natural person who is authorized, in accordance with 40 CFR Part 73, to transfer and otherwise dispose of allowances held in an allowance tracking system general account; or, in the case of a unit account, the designated representative of the owners and operators of the affected unit.

"Basic Phase II allowance allocations" means:

1. For calendar years 2000 through 2009 inclusive, allocations of allowances made by the administrator pursuant to § 403 (sulfur dioxide allowance program for existing and new units) and §§ 405(b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j) (Phase II sulfur dioxide requirements) of the federal Clean Air Act.

2. For each calendar year beginning in 2010, allocations of allowances made by the administrator pursuant to § 403 (sulfur dioxide allowance program for existing and new units) and §§ 405(b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j) (Phase II sulfur dioxide requirements) of the federal Clean Air Act.

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or any other medium.

"Certificate of representation" means the completed and signed submission required by 40 CFR 72.20, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources authorized to represent the owners and operators of such source or sources and of the affected units at such source or sources with regard to matters under the acid rain program.

"Certifying official" means:

1. For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

2. For partnership or sole proprietorship, a general partner or the proprietor, respectively; and

3. For a local government entity or state, federal, or other public agency, either a principal executive officer or ranking elected official.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials publication, "Standard Classification of Coals by Rank" (see 9VAC5-20-21).

"Coal-derived fuel" means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal (e.g., pulverized coal, coal refuse, liquefied or gasified coal, washed coal, chemically cleaned coal, coal-oil mixtures, and coke).

"Coal-fired" means the combustion of fuel consisting of coal or any coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), alone or in combination with any other fuel, where:

1. For purposes of 40 CFR Part 75 (continuous emissions monitoring), a unit is "coal-fired" independent of the percentage of coal or coal-derived fuel consumed in any calendar year (expressed in mmBtu); and

2. For all other purposes under the acid rain program, except for purposes of applying 40 CFR Part 76, a unit is "coal-fired" if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); provided that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field "PRIMFUEL."

"Cogeneration unit" means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

"Commence commercial operation" means to have begun to generate electricity for sale, including the sale of test generation.

"Commence construction" means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

"Commence operation" means to have begun any mechanical, chemical, or electronic process, including start-up of an emissions control technology or emissions monitor or of a unit's combustion chamber.

"Common stack" means the exhaust of emissions from two or more units through a single flue.

"Complete application" means an application that contains all the information required pursuant to 9VAC5-80-430 and 9VAC5-80-440 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the board from requesting or accepting additional information.

"Compliance certification" means a submission to the administrator or board, as appropriate, that is required by the acid rain program regulations to report an affected source or an affected unit's compliance or non-compliance with a provision of the acid rain program and that is signed and verified by the designated representative in

accordance with Subpart B and I of 40 CFR Part 72, 9VAC5-80-470 and 9VAC5-80-490 P, and the acid rain program regulations.

"Compliance plan" means the document submitted for an affected source in accordance with 9VAC5-80-430 specifying the method or methods by which each emissions unit at the source will meet applicable requirements.

"Compliance subaccount" means the subaccount in an affected unit's allowance tracking system account, established pursuant to 40 CFR 73.31(a) or (b), in which are held, from the date that allowances for the current calendar year are recorded under 40 CFR 73.34(a) until December 31, allowances available for use by the unit in the current calendar year and, after December 31 until the date that deductions are made under 40 CFR 73.35(b), allowances available for use by the unit in the preceding calendar year, for the purpose of meeting the unit's acid rain emissions limitation for sulfur dioxide.

"Compliance use date" means the first calendar year for which an allowance may be used for purposes of meeting a unit's acid rain emissions limitation for sulfur dioxide.

"Construction" means fabrication, erection, or installation of a unit or any portion of a unit.

"Customer" means a purchaser of electricity not for the purpose of retransmission or resale. For generating rural electrical cooperatives, the customers of the distribution cooperatives served by the generating cooperative will be considered customers of the generating cooperative.

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source or by the owners and operators of a combustion source or process source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this article, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program.

"Diesel fuel" means a low sulfur fuel oil of grades 1-D or 2-D, as defined in the American Society for Testing and Materials publication, "Standard Specification for Diesel Fuel Oils" (see 9VAC5-20-21), grades 1-GT or 2-GT, as defined by ASTM D2990-90a, "Standard Specification for Gas Turbine Fuel Oils," or grades 1 or 2, as defined by ASTM D396-90, "Standard Specifications for Fuel Oils" (incorporated by reference in 40 CFR 72.13).

"Direct public utility ownership" means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such equipment and facilities shall be measured on the basis of book value.

"Draft permit or draft acid rain permit" means the version of a permit, or the acid rain portion of a federal operating permit, for which the board offers public participation under 9VAC5-80-670 or affected state review under 9VAC5-80-690.

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the designated representative and as determined by the administrator, in accordance with the emissions monitoring requirements of 40 CFR Part 75.

"Emissions allowable under the permit" means a federally and state enforceable or state-only enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally and state enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of an affected source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term "unit" in this article or 40 CFR Part 72.

"EPA" means the United States Environmental Protection Agency.

"Excess emissions" means:

1. Any tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the acid rain emissions limitation for sulfur dioxide for the unit; and

2. Any tonnage of nitrogen oxide emitted by an affected unit during a calendar year that exceeds the annual tonnage equivalent of the acid rain emissions limitation for nitrogen oxides applicable to the affected unit taking into account the unit's heat input for the year.

"Existing unit" means a unit (including a unit subject to § 111 of the federal Clean Air Act) that commenced commercial operation before November 15, 1990 and that on or after November 15, 1990 served a generator with a nameplate capacity of greater than 25 MWe. "Existing unit" does not include simple combustion turbines or any unit that on or after November 15, 1990 served only generators with a nameplate capacity of 25 MWe or less. Any "existing unit" that is modified, reconstructed, or repowered after November 15, 1990 shall continue to be an "existing unit."

"Facility" means any institutional, commercial, or industrial structure, installation, plant, source, or building.

"Federal operating permit" means a permit issued under this article, Article 1 (9VAC5-80-50 et seq.) of this chapter, 40 CFR Part 72, or any other regulation implementing Title V of the federal Clean Air Act.

"Federal Power Act" means 16 USC § 791a et seq.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an approved implementation plan.

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review program permit issued under regulations approved by the EPA into the implementation plan.

6. Limitations and conditions that are part of a state operating permit issued under regulations approved by the EPA into the implementation plan as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

7. Limitations and conditions in a Virginia regulation or program that has been approved by the EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing §112 of the federal Clean Air Act.

8. Individual consent agreements that the EPA has legal authority to create.

"Final permit" means the version of a permit issued by the board under this article that has completed all review procedures required by 9VAC5-80-670 and 9VAC5-80-690.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fossil fuel-fired" means the combustion of fossil fuel or any derivative of fossil fuel, alone or in combination with any other fuel, independent of the percentage of fossil fuel consumed in any calendar year (expressed in mmBtu).

"Fuel oil" means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) as defined in the American Society for Testing and Materials publication, "Standard Specification for Fuel Oils" (see 9VAC5-20-21), and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state; provided that for purposes of monitoring requirements, "fuel oil" shall be limited to the petroleum-based fuels for which applicable ASTM methods are specified in Appendices D, E, or F of 40 CFR Part 75.

"Fugitive emissions" are those emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

"Gas-fired" means:

1. The combustion of:

a. Natural gas or other gaseous fuel (including coal-derived gaseous fuel), for at least 90% of the unit's average annual heat input during the previous three calendar years and for at least 85% of the annual heat input in each of those calendar years; and

b. Any fuel other than coal or coal-derived fuel (other than coal-derived gaseous fuel) for the remaining heat input, if any; provided that for purposes of 40 CFR Part 75, any fuel used other than natural gas shall be limited to:

(1) Gaseous fuels containing no more sulfur than natural gas; or

(2) Fuel oil.

2. For purposes of 40 CFR Part 75, a unit may initially qualify as gas-fired under the following circumstances:

a. If the designated representative provides fuel usage data for the unit for the three calendar years immediately prior to submission of the monitoring plan, and if the unit's fuel usage is projected to change on or before January 1, 1995, the designated representative submits a demonstration satisfactory to the administrator that the unit will qualify as gas-fired under the first sentence of this definition using the years 1995 through 1997 as the three calendar year period; or

b. If a unit does not have fuel usage data for one or more of the three calendar years immediately prior to submission of the monitoring plan, the designated representative submits:

(1) The unit's designated fuel usage;

(2) Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992;

(3) The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years; and

(4) Demonstration satisfactory to the administrator that the unit will qualify as gas-fired under the first sentence of this definition using those three consecutive calendar years as the three calendar year period.

"General account" means an allowance tracking system account that is not a unit account.

"Generator" means a device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).

"Generator output capacity" means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Heat input" means the product (expressed in mmBtu/time) of the gross calorific value of the fuel (expressed in Btu/lb) and the fuel feed rate into the combustion device (expressed in mass of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Insignificant activity" means any emission unit listed in 9VAC5-80-720 A, any emissions unit that meets the emissions criteria described in 9VAC5-80-720 B, or any emissions unit that meets the size or production rate criteria in 9VAC5-80-720 C.

"Independent power production facility" means a source that:

1. Is nonrecourse project-financed, as defined by the Secretary of Energy at 10 CFR Part 715;

2. Is used for the generation of electricity, 80% or more of which is sold at wholesale; and

3. Is a new unit required to hold allowances under Title IV of the federal Clean Air Act; but only if direct public utility ownership of the equipment comprising the facility does not exceed 50%.

"Insignificant activity" means any emissions unit listed in 9VAC5-80-720 A, any emissions unit that meets the emissions criteria described in 9VAC5-80-720 B, or any emission unit that meets the size or production rate criteria in 9VAC5-80-720 C. An emissions unit is not an insignificant activity if it has any applicable requirements unless those requirements apply identically to all emissions units at the facility.

"Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified generating unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

1. For the life of the unit;

2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

3. For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation. Failures that are caused entirely or in part by improperly designed equipment, poor maintenance, careless or improper operation, operator error, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"Nameplate capacity" means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.

"National allowance data base or NADB" means the data base established by the administrator under § 402(4)(C) of the federal Clean Air Act.

"Natural gas" means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) containing 1 grain or less hydrogen sulfide per 100 standard cubic feet, and 20 grains or less total sulfur per 100 standard cubic feet, produced in geological formations beneath the Earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure under ordinary conditions.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with 9VAC5-80-10 of Part I or Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1700 et seq.), or Article 9 (9VAC5-80-2000 et seq.) of this part, promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"New unit" means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

"Nonrecourse project-financed" means when being financed by any debt, such debt is secured by the assets financed and the revenues received by the facility being financed including, but not limited to, part or all of the revenues received under one or more agreements for the sale of the electric output from the facility, and which neither an electric utility with a retail service territory, nor a public utility as defined by § 201(e) of the Federal Power Act, as amended, 16 U.S.C. § 824(e), if any of its facilities are financed with general credit, is obligated to repay in whole or in part. A commitment to contribute equity or the contribution of equity to a facility by an electric utility shall not be considered an obligation of such utility to repay the debt of a facility. The existence of limited guarantees, commitments to pay for cost overruns, indemnity provisions, or other similar undertakings or assurances by the facility's owners or other project participants shall not disqualify a facility from being "nonrecourse project-financed" as long as, at the time of the financing for the facility, the borrower is obligated to make repayment of the term debt from revenues generated by the facility, rather than from other sources of funds. Projects that are 100% equity financed are also considered "nonrecourse project-financed" for purposes of § 416(a)(2)(B) of the federal Clean Air Act.

"Offset plan" means a plan pursuant to 40 CFR Part 77 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.

"Oil-fired" means:

1. The combustion of fuel oil for more than 10% of the average annual heat input during the previous three calendar years or for more than 15% of the annual heat input in any one of those calendar years; and any solid, liquid, or gaseous fuel (including coal-derived gaseous fuel), other than coal or any other coal-derived fuel, for the remaining heat input, if any; provided that for purposes of 40 CFR Part 75, any fuel used other than fuel oil shall be limited to gaseous fuels containing no more sulfur than natural gas.

2. For purposes of 40 CFR Part 75, a unit that does not have fuel usage data for one or more of the three calendar years immediately prior to submission of the monitoring plan may initially qualify as oil-fired if the designated representative submits:

a. Unit design fuel usage;

b. The unit's designed fuel usage;

c. Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992;

d. The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years; and

e. A demonstration satisfactory to the administrator that the unit will qualify as oil-fired under the first sentence of this definition using those three consecutive calendar years as the three calendar year period.

"Owner," with respect to affected units, combustion sources, or process sources, means any of the following persons:

1. Any holder of any portion of the legal or equitable title in an affected unit, a combustion source, or a process source; or

2. Any holder of a leasehold interest in an affected unit, a combustion source, or a process source; or

3. Any purchaser of power from an affected unit, a combustion source, or a process source under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit; or

4. With respect to any allowance tracking system general account, any person identified in the submission required by 40 CFR 73.31(c) that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.

"Owner or operator" means any person who is an owner or who operates, controls, or supervises an affected unit, affected source, combustion source, or process source, and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit, affected source, combustion source, or process source.

"Permit" (unless the context suggests otherwise) means any permit or group of permits covering a source subject to this article that is issued, renewed, amended, or revised pursuant to this article.

"Permit modification" means a revision to a permit issued under this article that meets the requirements of 9VAC5-80-570 on minor permit modifications, 9VAC5-80-580 on group processing of minor permit modifications, or 9VAC5-80-590 on significant modifications.

"Permit revision" means any permit modification that meets the requirements

of 9VAC5-80-570, 9VAC5-80-580, or 9VAC5-80-590 or any administrative permit amendment that meets the requirements of 9VA 5-80-560.

"Permit revision for affected units" means a permit modification, fast track modification, administrative permit amendment for affected units, or automatic permit amendment, as provided in 9VAC5-80-600 through 9VAC5-80-630.

"Phase II" means the acid rain program period beginning January 1, 2000, and continuing into the future thereafter.

"Potential electrical output capacity" means the MWe capacity rating for the units which shall be equal to 33% of the maximum design heat input capacity of the steam generating unit, as calculated according to Appendix D of 40 CFR Part 72.

"Potential to emit" means the maximum capacity of an affected source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Power distribution system" means the portion of an electricity grid owned or operated by a utility that is dedicated to delivering electric energy to customers.

"Power purchase commitment" means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

1. A power sales agreement;

2. A state regulatory authority order requiring a utility to (i) enter into a power sales agreement with the facility; (ii) purchase from the facility; or (iii) enter into arbitration concerning the facility for the purpose of establishing terms and conditions of the utility's purchase of power;

3. A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source executed within the time frame established by the terms of the letter of intent but no later than November 15, 1993 or, where the letter of intent does not specify a time frame, a power sales agreement applicable to the source executed on or before November 15, 1993; or

4. A utility competitive bid solicitation that has resulted in the selection of the qualifying facility or independent power production facility as the winning bidder.

"Power sales agreement" means a legally binding agreement between a qualifying facility, independent power production facility or firm associated with such facility and a regulated electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.

"Primary fuel or primary fuel supply" means the main fuel type (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.

"Proposed permit" means the version of a permit that the board proposes to issue and forwards to the administrator for review in compliance with 9VAC5-80-690.

"Qualifying facility" means a "qualifying small power production facility" within the meaning of § 3(17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of § 3(18)(B) of the Federal Power Act.

"Qualifying power purchase commitment" means a power purchase commitment in effect as of November 15, 1990 without regard to changes to that commitment so long as:

1. The identity of the electric output purchaser, or the identity of the steam purchaser and the location of the facility, remain unchanged as of the date the facility commences commercial operation; and

2. The terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the acid rain program to be shifted to the purchaser.

"Qualifying repowering technology" means:

1. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; or

2. Any oil- or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

"Receive or receipt of" means the date the administrator or the board comes into possession of information or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the information or correspondence, by the administrator or the board in the regular course of business.

"Recordation, record, or recorded" means, with regard to allowances, the transfer of allowances by the administrator from one allowance tracking system account or subaccount to another.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.

2. Any pollutant for which an ambient air quality standard has been promulgated.

3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.

4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.

5. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR Part 68.

6. Any pollutant subject to an applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-300.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

1. For a business entity, such as a corporation, association or cooperative:

a. The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the business entity, or

b. A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(1) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(2) The authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the board; or

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

4. For affected sources:

a. The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the federal Clean Air Act or the regulations promulgated thereunder are concerned; and

b. The designated representative or any other person specified in this definition for any other purposes under this article or 40 CFR Part 70.

"Schedule of compliance" means an enforceable sequence of actions, measures, or operations designed to achieve or maintain compliance, or correct non-compliance, with an applicable requirement of the acid rain program, including any applicable acid rain permit requirement.

"Secretary of Energy" means the Secretary of the United States Department of Energy or the Secretary's duly authorized representative.

"Simple combustion turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 through 1987 and does not use auxiliary firing at any time after November 15, 1990.

"Solid waste incinerator" means a source as defined in § 129(g)(1) of the federal Clean Air Act.

"Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the federal Clean Air Act. For purposes of § 502(c) of the federal Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

"Stack" means a structure that includes one or more flues and the housing for the flues.

"State enforceable" means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9VAC5-80-800 et seq.)

of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

"Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;

2. By United States Postal Service; or

3. By other equivalent means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Title I modification" means any modification under Parts C and D of Title I or §§ 111(a)(4), 112(a)(5), or 112(G) of the federal Clean Air Act; under regulations promulgated by the U.S. Environmental Protection Agency thereunder or in § 61.07 of 40 CFR Part 61; or under regulations approved by the U.S. Environmental Protection Agency to meet such requirements.

"Ton or tonnage" means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with 40 CFR Part 75, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not to equal any ton.

"Total planned net output capacity" means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990.

"Total installed net output capacity" shall be the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

"Unit" means a fossil fuel-fired combustion device.

"Unit account" means an allowance tracking system account, established by the administrator for an affected unit pursuant to 40 CFR 73.31 (a) or (b).

"Utility" means any person that sells electricity.

"Utility competitive bid solicitation" means a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility, independent power production facility, or new independent power production facility may

be regarded as having been "selected" in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

"Utility regulatory authority" means an authority, board, commission, or other entity (limited to the local-, state-, or federal-level, whenever so specified) responsible for overseeing the business operations of utilities located within its jurisdiction, including, but not limited to, utility rates and charges to customers.

"Utility unit" means a unit owned or operated by a utility:

1. That serves a generator in any state that produces electricity for sale, or

2. That during 1985, served a generator in any state that produced electricity for sale.

3. Notwithstanding paragraphs a and b of this definition, a unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after November 15, 1990 is not a utility unit for purposes of the acid rain program.

4. Notwithstanding paragraphs a and b of this definition, a unit that cogenerates steam and electricity is not a utility unit for purposes of the acid rain program, unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies, more than one-third of its potential electrical output capacity and more than 25 MWe output to any power distribution system for sale.

9VAC5-80-380. Affected units.

A. Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the acid rain program:

1. A unit listed in Table 1 of 40 CFR 73.10(a).

2. A unit that is listed in Table 2 or 3 of 40 CFR 73.10 and any other existing utility unit, except a unit under subsection B of this section.

3. A utility unit, except a unit under subsection B of this section, that:

a. Is a new unit;

b. Did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990 but serves such a generator after November 15, 1990;

c. Was a simple combustion turbine on November 15, 1990, but adds or uses auxiliary firing after November 15, 1990;

d. Was an exempt cogeneration facility under subsection B 4 of this section but during any three calendar-year period after November 15, 1990, sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs electric output, on a gross basis;

e. Was an exempt qualifying facility under subsection B 5 of this section but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;

f. Was an exempt independent power production facility under subsection B 6 of this section but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or

g. Was an exempt solid waste incinerator under subsection B 7 of this section but during any three calendar-year period after November 15, 1990, consumes 20% or more (on a Btu basis) fossil fuel.

B. The following types of units are not affected units subject to the requirements of the acid rain program:

1. A simple combustion turbine that commenced operation before November 15, 1990.

2. Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.

3. Any unit that, during 1985, did not serve a generator which produced electricity for sale and that did not as of November 15, 1990, and does not currently serve a generator that produces electricity for sale.

4. A cogeneration facility which:

a. For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it shall be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program; or

b. For units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or

less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program.

5. A qualifying facility that:

a. Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15% of its total planned net output capacity; and

b. Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130% of the total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

6. An independent power production facility that:

a. Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15% of its total planned net output capacity; and

b. Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130% of its total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

7. A solid waste incinerator, if more than 80% (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of non-fossil fuels for calendar years 1985 through 1987 must be greater than 80% for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of non-fossil fuels for the first three years of operation must be greater than 80% for such an incinerator to be exempt. If, during any three calendar-year period after November 15, 1990, such incinerator consumes 20% or more (on a Btu basis) fossil fuel, such incinerator shall be an affected source under the acid rain program.

8. A non-utility unit.

9. A unit for which an exemption under 40 CFR 72.7, 72.8, or 72.14 is in effect. Although such a unit is not an affected unit, the unit shall be subject to the requirements of 40 CFR 72.7, 72.8, or 72.14, as applicable to the exemption.

C. A certifying official of an owner or operator of any unit may petition the administrator for a determination of applicability under 40 CFR 72.6(c).

1. The petition shall be in writing and shall include identification of the unit

and relevant facts about the unit. In the petition, the certifying official shall certify, by his or her signature, the statements set forth at 40 CFR 72.21(b)(2). Within 10 business days of receipt of any written determination by the administrator covering the unit, the certifying official shall provide each owner or operator of the unit, facility, or source with a copy of the petition and a copy of the administrator's response.

2. The petition may be submitted to the administrator at any time but, if possible, should be submitted prior to the issuance (including renewal) of a Phase II acid rain permit for the unit.

9VAC5-80-390. New units exemption.

A. This section applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05% or less by weight, as determined in accordance with subsection D 1 of this section.

B. The designated representative, authorized in accordance with Subpart B of 40 CFR Part 72, of a source that includes a unit under subsection A of this section may petition the board for a written exemption, or to renew a written exemption, for the unit from the requirements of the acid rain program as described in subsection C 1 of this section. The petition shall be submitted on a form approved by the board which includes the following elements:

1. Identification of the unit.

2. The nameplate capacity of each generator served by the unit.

3. A list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with subsection A of this section.

4. A list of all fuels that are expected to be burned by the unit and their sulfur content by weight.

5. The special provisions in subsection D of this section.

C. The board shall issue, for any unit meeting the requirements of subsections A and B of this section, a written exemption from the requirements of the acid rain program except for the requirements specified in this section, 40 CFR 72.2 through 72.7, and 40 CFR 72.10 through 72.13 (general provisions); provided that no unit shall be exempted unless the designated representative of the unit surrenders, and the administrator deducts from the unit's allowances tracking system account, allowances pursuant to 40 CFR 72.7(c)(1)(i) and (d)(1) (new units exemption).

1. The exemption shall take effect on January 1 of the year immediately following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with subsection C 2 of this section, provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of the acid rain program concerning all years for which the

unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the acid rain program whether the violation occurs before or after the exemption takes effect.

2. In considering and issuing or denying a written exemption under this subsection, the board shall apply the permitting procedures in 9VAC5-80-510 C by:

a. Treating the petition as an acid rain permit application under such provisions;

b. Issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions; and

c. Issuing or denying a proposed written exemption that is treated as the issuance or denial of a proposed permit under such provisions, provided that no provision under 9VAC5-80-510 C concerning the content, effective date, or term of an acid rain permit shall apply to the written exemption or proposed written exemption under this section.

3. A written exemption issued under this section shall have a term of five years from its effective date, except as provided in subsection D 3 of this section.

D. The following provisions apply to units exempted under this section:

1. The owners and operators of each unit exempted under this section shall determine the sulfur content by weight of its fuel as follows:

a. For petroleum or petroleum products that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using methods found in the following American Society for Testing and Materials (ASTM) publications: "Standard Practice for Manual Sampling of Petroleum and Petroleum Products" and "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)," "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry" or "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy" (see 9VAC5-20-21).

b. For natural gas that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, the sulfur content shall be assumed to be 0.05% or less by weight.

c. For gaseous fuel (other than natural gas) that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using methods found in the following ASTM publications: "Standard Test Method for Total Sulfur in Fuel Gases" and "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)" (see 9VAC5-20-21); provided that if the gaseous fuel is delivered by pipeline to the unit, a sample of the

fuel shall be tested, at least once every quarter in which the unit operates during any year for which the exemption is in effect, using the method found in ASTM publication, "Standard Test Method for Total Sulfur in Fuel Gases" (see 9VAC5-20-21).

2. The owners and operators of each unit exempted under this section shall retain at the source that includes the unit, the records of the results of the tests performed under subsection D 1 a and D 1 c of this section and a copy of the purchase agreements for the fuel under subsection D 1 of this section, stating the sulfur content of such fuel. Such records and documents shall be retained for five years from the date they are created.

3. On the earlier of the date the written exemption expires, the date a unit exempted under this section burns any fuel with a sulfur content in excess of 0.05% by weight (as determined in accordance with subsection D 1 of this section), or 24 months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe, the unit shall no longer be exempted under this section and shall be subject to all requirements of the acid rain program, except that:

a. Notwithstanding 9VAC5-80-430 C, the designated representative of the source that includes the unit shall submit a complete acid rain permit application on the later of January 1, 1998 or the date the unit is no longer exempted under this section.

b. For purposes of applying monitoring requirements under 40 CFR Part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements of subsection A of this section.

9VAC5-80-400. Retired units exemption.

A. This section applies to any affected unit (except for an opt-in source) that is permanently retired.

B. The following provisions apply:

1. Any affected unit (except for an opt-in source) that is permanently retired shall be exempt from the acid rain program, except for the provisions of this section, 40 CFR 72.2 through 72.6, 72.10 through 72.13, and subpart B of 40 CFR Part 73.

2. The exemption under subsection B 1 of this section shall become effective on January 1 of the first full calendar year during which the unit is permanently retired. By December 31 of the first year that the unit is to be exempt under this section, the designated representative (authorized in accordance with subsection B of this section), or, if no designated representative has been authorized, a certifying official of each owner of the unit shall submit a statement to the board otherwise responsible for administering a Phase II acid rain permit for the unit. A copy of the statement shall also be submitted to the administrator. The statement shall state (in a format prescribed by the administrator) that the unit is permanently retired and will comply with the requirements of paragraph (d) of 40 CFR 72.8.

3. After receipt of the notice under subsection B 2 of this section, the board

shall amend the federal operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under subsections B 1 and D of this section.

C. A unit that was issued a written exemption under this section and that is permanently retired shall be exempt from the acid rain program, except for the provisions of this section, 40 CFR 72.2 through 72.6, 72.10 through 72.13, and subpart B of 40 CFR Part 73, and shall be subject to the requirements of subsection D of this section in lieu of the requirements set forth in the written exemption. The board shall amend the federal operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this subsection and under subsection D of this section.

D. The following special provisions apply:

1. A unit exempt under this section shall not emit any sulfur dioxide and nitrogen oxides starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart B of 40 CFR Part 73. If the unit is a Phase I unit, for each calendar year in Phase I, the designated representative of the unit shall submit a Phase I permit application in accordance with subparts C and D of 40 CFR Part 72 and an annual certification report in accordance with 40 CFR 72.90 through 72.92 and is subject to 40 CFR 72.95 and 72.96.

2. A unit exempt under this section shall not resume operation unless the designated representative of the source that includes the unit submits a complete acid rain permit application under 40 CFR 72.31 for the unit not less than 24 months prior to the later of January 1, 2000, or the date on which the unit is first to resume operation.

3. The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the acid rain program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

4. For any period for which a unit is exempt under this section, the unit is not an affected unit under the acid rain program and 40 CFR Parts 70 and 71 and is not eligible to be an opt-in source under 40 CFR Part 74. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under 40 CFR Parts 70 and 71.

5. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the administrator or the permitting authority. The owners and operators bear the burden of proof that the unit is permanently retired.

6. The following provisions apply to the loss of exemption:

a. On the earlier of the following dates, a unit exempt under subsection B or C of this section shall lose its exemption and become an affected unit under the acid rain program and 40 CFR Parts 70 and 71:

(1) The date on which the designated representative submits an acid rain permit application under subsection D 2 of this section; or

(2) The date on which the designated representative is required under subsection D 2 of this section to submit an acid rain permit application.

b. For the purpose of applying monitoring requirements under 40 CFR Part 75, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit resumes operation.

9VAC5-80-410. General.

A. No permit may be issued pursuant to this article until the article has been approved by the administrator, whether full, interim, partial, for federal delegation purposes, or otherwise.

B. If requested in the application for a permit or permit renewal submitted pursuant to this article, the board may combine the requirements of and the permit for a source subject to the state operating permit program with the requirements of and the permit for a source subject to this article provided the application contains the necessary information required for a permit under the state operating permit program.

C. For the purpose of this article, the phrase "Regulations for the Control and Abatement of Air Pollution" means 9VAC5 Chapter 10 (9VAC5-10-10 et seq.) through 9VAC5 Chapter 80 (9VAC5-80-10 et seq.). For purposes of implementing and enforcing those provisions of this article associated with applicable federal requirements as well as those provisions of this article intended to implement Title V of the federal Clean Air Act, the phrase "Regulations for the Control and Abatement of Air Pollution" means only those provisions that have been approved by EPA as part of the implementation plan or otherwise have been approved by or found to be acceptable by EPA for the purpose of implementing requirements of the federal Clean Air Act. For the purpose of this article, terms and conditions relating to applicable federal requirements shall be derived only from provisions that qualify as applicable federal requirements.

9VAC5-80-420. Standard requirements.

A. The following requirements apply to affected sources and affected units subject to this article:

1. The designated representative of each affected source and each affected unit at the source shall:

a. Submit a complete acid rain permit application (including a compliance plan) under this article in accordance with the deadlines specified in 9VAC5-

80-430 C; and

b. Submit in a timely manner a complete reduced utilization plan if required under 40 CFR 72.43; and

c. Submit in a timely manner any supplemental information that the board determines is necessary in order to review an acid rain permit application and issue or deny an acid rain permit.

2. The owners and operators of each affected source and each affected unit at the source shall:

a. Operate the unit in compliance with a complete acid rain permit application or a superseding acid rain permit issued by the board; and

b. Have an acid rain permit.

B. The following monitoring requirements apply to affected sources and affected units subject to this article:

1. The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in 40 CFR Part 75 and § 407 of the federal Clean Air Act.

2. The emissions measurements recorded and reported in accordance with 40 CFR Part 75 and § 407 of the federal Clean Air Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the acid rain program.

3. The requirements of 40 CFR Parts 75 and 76 shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the federal Clean Air Act and other provisions of the federal operating permit for the source.

C. The following requirements regarding sulfur dioxide limitations and allowances apply to affected sources and affected units subject to this article:

1. The owners and operators of each source and each affected unit at the source shall:

a. Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount after deductions under 40 CFR 73.34(c) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

b. Comply with the applicable acid rain emissions limitation for sulfur dioxide.

2. Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the federal Clean Air Act.

3. An affected unit shall be subject to the requirements under subsection C 1 of this section as follows:

a. Starting January 1, 1995, an affected unit under 9VAC5-80-380 A 2; or

b. Starting on or after January 1, 1995, in accordance with 40 CFR 72.41 and 72.43, an affected unit under 40 CFR 72.6(a)(2) or (3) that is a substitution or compensating unit; or

c. Starting January 1, 2000, an affected unit under 40 CFR 72.6(a)(2) that is not a substitution or compensating unit; or

d. Starting on the later of January 1, 2000 or the deadline for monitor certification under 40 CFR Part 75, an affected unit under 9VAC5-80-380 A 3 that is not a substitution or compensating unit.

4. Allowances shall be held in, deducted from, or transferred among allowance tracking system accounts in accordance with the acid rain program.

5. An allowance shall not be deducted, in order to comply with the requirements under subsection C 1 a of this section, prior to the calendar year for which the allowance was allocated.

6. An allowance allocated by the administrator under the acid rain program is a limited authorization to emit sulfur dioxide in accordance with the acid rain program. No provision of the acid rain program, the acid rain permit application, the acid rain permit, or the written exemption under 9VAC5-80-390 and 9VAC5-80-400 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

7. An allowance allocated by the administrator under the acid rain program does not constitute a property right.

D. The owners and operators of the source and each affected unit at the source shall comply with the acid rain applicable emissions limitation for nitrogen oxides.

E. The following excess emissions requirements apply to affected sources and affected units subject to this article:

1. The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under 40 CFR Part 77, and to the board.

2. The owners and operators of an affected unit that has excess emissions in any calendar year shall:

a. Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by 40 CFR Part 77; and

b. Comply with the terms of an approved offset plan, as required by 40 CFR Part 77.

F. The following recordkeeping and reporting requirements apply to affected sources and affected units subject to this article:

1. Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the administrator or board.

a. The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR 72.24, provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

b. All emissions monitoring information, in accordance with 40 CFR Part 75, provided that to the extent that 40 CFR Part 75 provides for a three year period for recordkeeping, the three year period shall apply.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the acid rain program.

d. Copies of all documents used to complete an acid rain permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of the acid rain program.

2. The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under 9VAC5-80-470 and 9VAC5-80-490 P and 40 CFR Part 75.

G. The following requirements concerning liability apply to affected sources and affected units subject to this article:

1. Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain permit application, an acid rain permit, or a written exemption under 9VAC5-80-390 or 9VAC5-80-400, including any requirement for the

payment of any penalty owed to the United States, shall be subject to enforcement by the administrator pursuant to § 113(c) of the federal Clean Air Act and by the board pursuant to §§ 10.1-1316 and 10.1-1320 of the Code of Virginia.

2. Any person who knowingly makes a false, material statement in any record, submission, or report under the acid rain program shall be subject to criminal enforcement by the administrator pursuant to § 113(c) of the federal Clean Air Act and 18 U.S.C. 1001 and by the board pursuant to §§ 10.1-1316 and 10.1-1320 of the Code of Virginia.

3. No permit revision shall excuse any violation of the requirements of the acid rain program that occurs prior to the date that the revision takes effect.

4. Each affected source and each affected unit shall meet the requirements of the acid rain program.

5. Any provision of the acid rain program that applies to an affected source including a provision applicable to the designated representative of an affected source shall also apply to the owners and operators of such source and of the affected units at the source.

6. Any provision of the acid rain program that applies to an affected unit including a provision applicable to the designated representative of an affected unit shall also apply to the owners and operators of such unit. Except as provided under 9VAC5-80-460 Phase II repowering extension plans, 40 CFR 72.41 (substitution plans), 72.43 (reduced utilization plans), 72.44 (Phase II repowering extensions), 74.47 (thermal energy plans), and Part 76 (NO_X averaging plans), and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 including 40 CFR 75.16, 75.17, and 75.18, the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

7. Each violation of a provision of the acid rain program regulations by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the federal Clean Air Act.

H. No provision of the acid rain program, an acid rain permit application, an acid rain permit, or a written exemption under 9VAC5-80-390 or 9VAC5-80-400 shall be construed as:

1. Except as expressly provided in Title IV of the federal Clean Air Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the federal Clean Air Act, including the provisions of Title I of the federal Clean Air Act relating to applicable National Ambient Air Quality Standards or the implementation plan;

2. Limiting the number of allowances a unit can hold, provided that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the federal Clean Air Act;

3. Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state regulation, or limiting such state regulation, including any prudence review requirements under such state law;

4. Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or

5. Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

9VAC5-80-430. Applications.

A. A single application is required identifying each emission unit subject to this article. The application shall be submitted according to the requirements of this section, 9VAC5-80-440 and procedures approved by the board. Where several emissions units are included in one affected source, a single application covering all units in the source shall be submitted. A separate application is required for each affected source subject to this article.

B. For each source subject to this article, the responsible official shall submit a timely and complete permit application in accordance with subsections C and D of this section.

C. The following requirements concerning timely applications apply to affected sources and affected units subject to this article:

1. No owner or operator of any affected source shall operate the source or affected unit without a permit that states its acid rain program requirements.

2. The designated representative of any affected source shall submit a complete acid rain permit application by the following applicable deadlines:

a. For any affected source with an existing unit described under 9VAC5-80-380 A 2, the designated representative shall submit a complete acid rain permit application governing such unit to the board as follows:

(1) For sulfur dioxide, on or before January 1, 1996; and

(2) For nitrogen oxides, on or before January 1, 1998.

b. For any affected source with a new unit described under 9VAC5-80-380 A 3 a, the designated representative shall submit a complete acid rain permit application governing such unit to the board at least 24 months before the later of January 1, 2000 or the date on which the unit commences operation.

c. For any affected source with a unit described under 9VAC5-80-380 A 3 b, the designated representative shall submit a complete acid rain permit application governing such unit to the board at least 24 months before the later of January 1, 2000 or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

d. For any affected source with a unit described under 9VAC5-80-380 A 3 c, the designated representative shall submit a complete acid rain permit application governing such unit to the board at least 24 months before the later of January 1, 2000 or the date on which the auxiliary firing commences operation.

e. For any affected source with a unit described under 9VAC5-80-380 A 3 d, the designated representative shall submit a complete acid rain permit application governing such unit to the board before the later of January 1, 1998 or March 1 of the year following the three calendar-year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

f. For any affected source with a unit described under 9VAC5-80-380 A 3 e, the designated representative shall submit a complete acid rain permit application governing such unit to the board before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

g. For any affected source with a unit described under 9VAC5-80-380 A 3 f, the designated representative shall submit a complete acid rain permit application governing such unit to the board before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

h. For any affected source with a unit described under 9VAC5-80-380 A 3 g, the designated representative shall submit a complete acid rain permit application governing such unit to the board before the later of January 1, 1998 or March 1 of the year following the three calendar-year period in which the incinerator consumed 20% or more fossil fuel (on a Btu basis).

3. The responsible official for an affected source applying for a permit under this article for the first time shall submit a complete application pertaining to all applicable requirements other than the acid rain program requirements on a schedule to be determined by the department but no later than 12 months following the effective date of approval of Article 1 (9VAC5-80-50 et seq.) of this part by the administrator, to include approval for federal delegation purposes.

4. The owner of a source subject to the requirements of the new source review program shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this article would prohibit such construction or change in operation, the owner shall obtain a

permit revision before commencing operation. The owner of a source may file a complete application to obtain the permit or permit revision under this article on the same date the permit application is submitted under the requirements of the new source review program.

5. For purposes of permit renewal, the owner shall submit an application at least six months but no earlier than 18 months prior to the date of permit expiration.

D. The following requirements concerning the completeness of the permit application apply to affected sources and affected units subject to this article:

1. To be determined complete, an application shall contain all information required pursuant to 9VAC5-80-440.

2. Applications for permit revision or for permit reopening shall supply information required under 9VAC5-80-440 only if the information is related to the proposed change.

3. Within 60 days of receipt of the application, the board shall notify the applicant in writing either that the application is or is not complete. If the application is determined not to be complete, the board shall provide (i) a list of the deficiencies in the notice and (ii) a determination as to whether the application contains sufficient information to begin a review of the application.

4. If the board does not notify the applicant in writing within 60 days of receipt of the application, the application shall be deemed to be complete.

5. For minor permit modifications under 9VAC5-80-570, a completeness determination shall not be required.

6. If, while processing an application that has been determined to be complete, the board finds that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

7. The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under the new source review program.

8. Upon notification by the board that the application is complete or after 60 days following receipt of the application by the board, the applicant shall submit three additional copies of the complete application to the board.

9. The board shall submit a written notice of application completeness to the administrator within 10 working days following a determination by the board that the acid rain permit application is complete.

E. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. An

applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date a complete application was filed but prior to release of a draft permit.

F. The following requirements concerning the application shield apply to affected sources and affected units subject to this article:

1. If an applicant submits a timely and complete application for an initial permit or renewal under this section, the failure of the source to have a permit or the operation of the source without a permit shall not be a violation of this article until the board takes final action on the application under 9VAC5-80-510.

2. No source shall operate after the time that it is required to submit a timely and complete application under subsections C and D of this section for a renewal permit, except in compliance with a permit issued under this article.

3. If the source applies for a minor permit modification and wants to make the change proposed under the provisions of either 9VAC5-80-570 F or 9VAC5-80-580 E, the failure of the source to have a permit modification or the operation of the source without a permit modification shall not be a violation of this article until the board takes final action on the application under 9VAC5-80-510.

4. If the source notifies the board that it wants to make an operational flexibility permit change under 9VAC5-80-680 B, the failure of the source to have a permit modification or operation of the source without a permit modification for the permit change shall not be a violation of this article unless the board notifies the source that the change is not a permit change as specified in 9VAC5-80-680 B 1 a.

5. If an applicant submits a timely and complete application under this section for a permit renewal but the board fails to issue or deny the renewal permit before the end of the term of the previous permit, (i) the previous permit shall not expire until the renewal permit has been issued or denied and (ii) all the terms and conditions of the previous permit, including any permit shield granted pursuant to 9VAC5-80-500, shall remain in effect from the date the application is determined to be complete until the renewal permit is issued or denied.

6. The protection under subsections F 1 and F 5 (ii) of this section shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the applicant fails to submit by the deadline specified in writing by the board any additional information identified as being needed to process the application.

7. Permit application shield and binding effect of acid rain permit application for the affected source.

a. Once a designated representative submits a timely and complete acid rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the

requirement to have an acid rain permit under 9VAC5-80-420 A 2 and 9VAC5-80-430 C.

b. The protection provided under subsection F 7 a of this section shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the designated representative fails to submit by the deadline specified in writing by the board any supplemental information identified as being needed to process the application.

c. Prior to the earlier of the date on which an acid rain permit is issued subject to administrative appeal under 40 CFR Part 78 or is issued as a final permit, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete acid rain permit application shall be deemed to be operating in compliance with the acid rain program.

d. A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to judicial review.

G. The responsibilities of the designated representative shall be as follows:

1. The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with Subpart B of 40 CFR Part 72 and, concurrently, shall submit a copy to the board.

2. Each submission under the acid rain program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.

3. In each submission under the acid rain program, the designated representative shall certify, by his signature:

a. The following statement, which shall be included verbatim in such submission: "I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made."

b. The following statement, which shall be included verbatim in such submission: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

4. The board shall accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been

made, signed, and certified in accordance with subsections G 2 and G 3 of this section.

5. The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

a. By the date of submission, of any acid rain program submissions by the designated representative;

b. Within 10 business days of receipt of a determination, of any written determination by the administrator or the board; and

c. Provided that the submission or determination covers the source or the unit.

6. The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under subsection G 5 of this section, unless the owner or operator expressly waives the right to receive such a copy.

H. Except as provided in 40 CFR 72.23, no objection or other communication submitted to the administrator or the board concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the board, under the acid rain program. In the event of such communication, the board is not required to stay any submission or the effect of any action or inaction under the acid rain program. The board shall not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

I. The responsibilities of the responsible official shall be as follows:

1. Any application form, report, compliance certification, or other document required to be submitted to the board under this article that concerns applicable requirements other than the acid rain program requirements may be signed by a responsible official other than the designated representative.

2. Any responsible official signing a document required to be submitted to the board under this article shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

9VAC5-80-440. Application information required.

A. The board shall furnish application forms to applicants.

B. Each application for a permit shall include, but not be limited to, the information listed in subsections C through K of this section.

C. Identifying information as follows shall be included:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

3. Identification of each affected unit at the source for which the permit application is submitted.

4. If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

D. Emissions-related information as follows shall be included:

1. All emissions of pollutants for which the source is major and all emissions of regulated air pollutants.

a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit with the following exceptions.

(1) Any emissions unit exempted from the requirements of this subsection because the emissions level or size of the unit is deemed to be insignificant under 9VAC5-80-720 B or C shall be listed in the permit application and identified as an insignificant activity. This requirement shall not apply to emissions units listed in 9VAC5-80-720 A.

(2) Regardless of the emissions units designated in 9VAC5-80-720 A or C or the emissions levels listed in 9VAC5-80-720 B, the emissions from any emissions unit shall be included in the permit application if the omission of those emissions units from the application would interfere with the determination of the applicability of this article, the determination or imposition of any applicable requirement, or the calculation of permit fees.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the

extent that the emissions are quantifiable.

2. Additional information related to the emissions of air pollutants sufficient for the board to verify which requirements are applicable to the source, and other information necessary to determine and collect any permit fees owed under Article 2 (9VAC5-80-310 et seq.) of this part. Identification and description of all points of emissions described in subsection D 1 of this section in sufficient detail to establish the basis for fees and applicability of requirements of Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act.

3. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

4. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

7. Other information required by any applicable requirement (including information related to stack height limitations required under 9VAC5-40-20 I or 9VAC5-50-20 H).

8. Calculations on which the information in subsections D 1 through 7 of this section is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

E. Air pollution control requirement information as follows shall be included:

1. Citation and description of all applicable requirements, including those covering activities deemed insignificant under Article 4 (9VAC5-80-710 et seq.) of this part.

2. Description of or reference to any applicable test method for determining compliance with each applicable requirement.

F. Additional information that may be necessary to implement and enforce other requirements of Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act or to determine the applicability of such requirements.

G. An explanation of any proposed exemptions from otherwise applicable requirements.

H. Additional information as determined to be necessary by the board to define alternative operating scenarios identified by the source pursuant to 9VAC5-80-490 J or to

define permit terms and conditions implementing operational flexibility under 9VAC5-80-680.

l. Compliance plan information as follows shall be included:

1. A description of the compliance status of the source with respect to all applicable requirements.

2. A description as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

c. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

3. A complete acid rain compliance plan for each affected unit, in accordance with 9VAC5-80-450.

4. A compliance schedule as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement or by the board if no specific requirement exists.

c. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or board order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

5. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

6. The requirements of subsection I of this section shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the federal Clean Air Act with regard to the schedule and method or methods the source will use to achieve compliance with the acid rain emissions limitations.

J. Compliance certification information as follows shall be included:

1. A certification of compliance with all applicable requirements by a responsible official or a plan and schedule to come into compliance or both as required by subsection I of this section.

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the board.

4. A statement indicating the source is in compliance with any applicable federal requirements concerning enhanced monitoring and compliance certification.

K. If applicable, a statement indicating that the source has complied with the applicable federal requirement to register a risk management plan under § 112(r)(7) of the federal Clean Air Act or, as required under subsection I of this section, has made a statement in the source's compliance plan that the source intends to comply with this applicable federal requirement and has set a compliance schedule for registering the plan.

L. Regardless of any other provision of this section, an application shall contain all information needed to determine or to impose any applicable requirement or to evaluate the fee amount required under the schedule approved pursuant to Article 2 (9VAC5-80-310 et seq.) of this part.

M. The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by 40 CFR 72.72(b)(4).

N. The applicant shall meet the requirements of 9VAC5-80-420 concerning permit applications, operation of the affected source, monitoring, sulfur dioxide, nitrogen dioxide, excess emissions, recordkeeping and reporting, liability, and effect on other authorities.

9VAC5-80-450. Acid rain compliance plan and compliance options.

A. For each affected unit included in an acid rain permit application, a complete acid rain compliance plan shall include:

1. For sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit's

compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with this section and 9VAC5-80-460, one or more of the acid rain compliance options.

2. For nitrogen oxides emissions, a certification that the unit will comply with the applicable emission limitation in 40 CFR 76.5, 76.6, or 76.7 or shall specify one or more acid rain compliance options, in accordance with the requirements of 40 CFR Part 76.

B. The acid rain compliance plan may include a multi-unit compliance option under 9VAC5-80-460 or § 407 of the federal Clean Air Act or 40 CFR Part 76.

1. A plan for a compliance option that includes units at more than one affected source shall be complete only if:

a. Such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan; and

b. A complete permit application is submitted covering each unit governed by such plan.

2. The board's approval of a plan under subsection B 1 of this section that includes units in more than one state shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

C. In the compliance plan, the designated representative of an affected unit may propose, in accordance with this section and 9VAC5-80-460, any acid rain compliance option for conditional approval, provided that an acid rain compliance option under § 407 of the federal Clean Air Act may be conditionally proposed only to the extent provided in 40 CFR Part 76.

1. To activate a conditionally-approved acid rain compliance option, the designated representative shall notify the board in writing that the conditionally-approved compliance option will actually be pursued beginning January 1 of a specified year. Such notification shall be subject to the limitations on activation under 9VAC5-80-460 and 40 CFR Part 76. If the conditionally-approved compliance option includes a plan described in subsection B 1 of this section, the designated representative of each source governed by the plan shall sign and certify the notification.

2. The notification under subsection C 1 of this section shall specify the first calendar year and the last calendar year for which the conditionally-approved acid rain compliance option is to be activated. A conditionally-approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

3. Upon submission of a notification meeting the requirements of subsections C 1 and C 2 of this section, the conditionally-approved acid rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally-approved compliance option.

4. A notification meeting the requirements of subsections C 1 and C 2 of this section will revise the unit's permit in accordance with 9VAC5-80-620.

D. The following requirements concerning terminations of compliance options apply to affected sources and affected units subject to this article:

1. The designated representative for a unit may terminate an acid rain compliance option by notifying the board in writing that an approved compliance option will be terminated beginning January 1 of a specified year. Such notification shall be subject to the limitations on termination under 9VAC5-80-460 and 40 CFR Part 76. If the compliance option includes a plan described in subsection B 1 of this section, the designated representative for each source governed by the plan shall sign and certify the notification. Such notification shall be subject to the limitations or terminations under subpart D or 40 CFR Part 72 and regulations implementing § 407 of the federal Clean Air Act.

2. The notification under subsection D 1 of this section shall specify the calendar year for which the termination will take effect.

3. Upon submission of a notification meeting the requirements of subsections D 1 and D 2 of this section, the termination becomes binding on the owners and operators and the designated representative of any unit governed by the acid rain compliance option to be terminated.

4. A notification meeting the requirements of subsections D 1 and D 2 of this section will revise the unit's permit in accordance with 9VAC5-80-620.

9VAC5-80-460. Repowering extensions.

A. This section shall apply to the designated representative of:

a. Any existing affected unit that is a coal-fired unit and has a 1985 actual sulfur dioxide emissions rate equal to or greater than 1.2 lbs/mmBtu; or

b. Any new unit that will be a replacement unit, as provided in subsection B 2 of this section, for a unit meeting the requirements of subsection A 1 a of this section; or

c. Any oil- or gas-fired unit or both that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Secretary of Energy.

A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan from the requirement to comply with such unit's acid rain emissions

limitations for sulfur dioxide.

B. The designated representative of any unit meeting the requirements of subsection A 1 a of this section may include in the unit's acid rain permit application a repowering extension plan that includes a demonstration that:

1. The unit will be repowered with a qualifying repowering technology in order to comply with the emissions limitations for sulfur dioxide; or

2. The unit will be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology and the existing unit will be permanently retired from service on or before the date on which the new utility unit commences commercial operation.

C. In order to apply for a repowering extension, the designated representative of a unit under subsection A of this section shall:

1. Submit to the board, by January 1, 1996, a complete repowering extension plan;

2. Submit to the administrator before June 1, 1997, a complete petition for approval of repowering technology in accordance with 40 CFR 72.44(d) and submit a copy to the board; and

3. If the repowering extension plan is submitted for conditional approval, submit to the board by December 31, 1997, a notification to activate the plan in accordance with 9VAC5-80-450 C.

D. A complete repowering extension plan shall include the following elements:

1. Identification of the existing unit governed by the plan.

2. The unit's sulfur dioxide emissions limitation in the implementation plan.

3. The unit's 1995 actual sulfur dioxide emissions rate.

4. A schedule for construction, installation, and commencement of operation of the repowering technology approved or submitted for approval under 40 CFR 72.44(d) with dates for the following milestones:

a. Completion of design engineering;

b. For a plan under subsection B 1 of this section, removal of the existing unit from operation to install the qualified repowering technology;

c. Commencement of construction;

d. Completion of construction;

e. Start-up testing;

f. For a plan under subsection B 2 of this section, shutdown of the existing unit; and

g. Commencement of commercial operation of the repowering technology.

5. For a plan under subsection B 2 of this section:

a. Identification of the new unit. A new unit shall not be included in more than one repowering extension plan.

b. Certification that the new unit will replace the existing unit.

c. Certification that the new unit has the same designated representative as the existing unit.

d. Certification that the existing unit will be permanently retired from service on or before the date the new unit commences commercial operation.

6. The special provisions of subsection G of this section.

E. The board shall not approve a repowering extension plan until the administrator makes a conditional determination that the technology is a qualified repowering technology, unless the board approves such plan subject to the conditional determination of the administrator.

1. Permit issuance shall be as follows:

a. Upon a conditional determination by the administrator that the technology to be used in the repowering extension plan is a qualified repowering technology and a determination by the board that such plan meets the requirements of this section, the board shall issue the acid rain portion of the federal operating permit including:

(1) The approved repowering extension plan; and

(2) A schedule of compliance with enforceable milestones for construction, installation, and commencement of operation of the repowering technology and other requirements necessary to ensure that emission reduction requirements under this section will be met.

b. Except as otherwise provided in subsection F of this section, the repowering extension shall be in effect starting January 1, 2000 and ending on the day before the date (specified in the acid rain permit) on which the existing unit will be removed from operation to install the qualifying repowering technology or will be permanently removed from service for replacement by a new unit with such technology, provided that the

repowering extension shall end no later than December 31, 2003.

c. The portion of the federal operating permit specifying the repowering extension and other requirements under subsection E 1 a of this section shall be subject to the administrator's final determination, under 40 CFR 72.44(d)(4), that the technology to be used in the repowering extension plan is a qualifying repowering technology.

3. Allowances shall be allocated in accordance with 40 CFR 72.44(f)(3) and (g).

F. The following provisions apply with respect to failed repowering projects:

1. If, at any time before the end of the repowering extension under subsection E 1 b of this section, the designated representative of a unit governed by an approved repowering extension plan submits the notification under 9VAC5-80-470 D that the owners and operators have decided to terminate efforts to properly design, construct, and test the repowering technology specified in the plan before completion of construction or start-up testing, the designated representative may submit to the board a proposed permit modification demonstrating that such efforts were in good faith. If such demonstration is to the satisfaction of the administrator, the unit shall not be deemed in violation of the federal Clean Air Act because of such a termination and the board shall revise the federal operating permit in accordance with subsection F 2 of this section.

2. Regardless of whether notification under subsection F 1 of this section is given, the repowering extension shall end beginning on the earlier of the date of such notification or the date by which the designated representative was required to give such notification under 9VAC5-80-470 D. The administrator shall deduct allowances (including a pro rata deduction for any fraction of a year) from the allowance tracking system account of the existing unit to the extent necessary to ensure that, beginning the day after the extension ends, allowances are allocated in accordance with 40 CFR 73.21(c)(1).

3. The designated representative of a unit governed by an approved repowering extension plan may submit to the board a proposed permit modification demonstrating that the repowering technology specified in the plan was properly constructed and tested on such unit but was unable to achieve the emissions reduction limitations specified in the plan and that it is economically or technologically infeasible to modify the technology to achieve such limits, the unit shall not be deemed in violation of the federal Clean Air Act because of such failure to achieve the emissions reduction limitations. In order to be properly constructed and tested, the repowering technology shall be constructed at least to the extent necessary for direct testing of the multiple combustion emissions (including sulfur dioxide and nitrogen oxides) from such unit while operating the technology at nameplate capacity. If such demonstration is to the satisfaction of the administrator, the following shall occur:

a. The unit shall not be deemed in violation of the federal Clean Air Act because of such failure to achieve the emissions reduction limitations;

b. The board shall revise the acid rain portion of the federal operating permit in accordance with subsections F 3 b and F 3 c of this section;

c. The existing unit may be retrofitted or repowered with another clean coal or other available control technology; and

d. The repowering extension shall continue in effect until the earlier of the date the existing unit commences commercial operation with such control technology or December 31, 2003. The board shall allocate or deduct allowances as necessary to ensure that allowances are allocated in accordance with paragraph (f)(3) of 40 CFR 72.44.

G. 1. The following special provisions apply with regard to emissions limitations.

a. For sulfur dioxide, allowances allocated during the repowering extension under paragraphs (f)(3) and (g)(2)(iii) of 40 CFR 72.40 to a unit governed by an approved repowering extension plan shall not be transferred to any allowance tracking system account other than the unit accounts of other units at the same source as that unit.

b. For nitrogen oxides, any existing unit governed by an approved repowering extension plan shall be subject to the acid rain emissions limitations for nitrogen oxides in accordance with 40 CFR Part 76 beginning on the date that the unit is removed from operation to install the repowering technology or is permanently removed from service.

c. No existing unit governed by an approved repowering extension plan shall be eligible for a waiver under § 111(j) of the federal Clean Air Act.

d. No new unit governed by an approved repowering extension plan shall receive an exemption from the requirements imposed under § 111 of the federal Clean Air Act.

2. Each unit governed by an approved repowering extension plan shall comply with the special reporting requirements of 40 CFR 72.94.

3. The following provisions regarding liability apply.

a. The owners and operators of a unit governed by an approved repowering plan shall be liable for any violation of the plan at that or any other unit governed by the plan, including liability for fulfilling the obligations specified in 40 CFR Part 77 and э 411 of the federal Clean Air Act.

b. The units governed by the plan under paragraph (b)(2) of 40 CFR 72.40 shall continue to have a common designated representative until the exiting unit is permanently retired under the plan.

4. Except as provided in paragraph (g) of 40 CFR 72.40, a repowering extension plan shall not be terminated after December 31, 1999.

9VAC5-80-470. Units with repowering extension plans.

A. No later than January 1, 2000, the designated representative of a unit governed by an approved repowering plan shall submit to the administrator and the board:

1. Satisfactory documentation of a preliminary design and engineering effort.

2. A binding letter agreement for the executed and binding contract (or for each in a series of executed and binding contracts) for the majority of the equipment to repower the unit using the technology conditionally approved by the administrator under 40 CFR 72.44(d)(3).

3. The letter agreement under subsection A 2 of this section shall be signed and dated by each party and specify:

a. The parties to the contract;

b. The date each party executed the contract;

c. The unit to which the contract applies;

d. A brief list identifying each provision of the contract;

e. Any dates to which the parties agree, including construction completion date;

f. The total dollar amount of the contract; and

g. A statement that a copy of the contract is on site at the source and will be submitted upon written request of the administrator or the board.

B. The designated representative of a unit governed by an approved repowering plan shall notify the administrator and the board in writing at least 60 days in advance of the date on which the existing unit is to be removed from operation so that the qualified repowering technology can be installed, or is to be replaced by another unit with the qualified repowering technology, in accordance with the plan.

C. Not later than 60 days after the units repowered under an approved repowering plan commences operation at full load, the designated representative of the unit shall submit a report to the administrator and the board comparing the actual hourly emissions and percent removal of each pollutant controlled at the unit to the actual hourly emissions and percent removal at the existing unit under the plan prior to repowering, determined in accordance with 40 CFR Part 75.

D. If at any time before the end of the repowering extension and before completion of construction and start-up testing, the owners and operators decide to terminate good faith efforts to design, construct, and test the qualified repowering technology on the unit to

be repowered under an approved repowering plan, then the designated representative shall submit a notice to the administrator and the board by the earlier of the end of the repowering extension or a date within 30 days of such decision, stating the date on which the decision was made.

9VAC5-80-480. Emission caps.

A. The board may establish an emission cap for sources or emissions units applicable under this article when the applicant requests that a cap be established.

B. The criteria in subsections B 1 through B 5 of this section shall be met in establishing emission standards for emission caps to the extent necessary to assure that emissions levels are met permanently.

1. If an emissions unit was subject to emission standards prescribed in Regulations for the Control and Abatement of Air Pollution prior to the date the permit is issued, a standard covering the emissions unit and pollutants subject to the emission standards shall be incorporated into the permit issued under this article.

2. A permit issued under this article may also contain emission standards for emissions units or pollutants that were not subject to emission standards prescribed in Regulations for the Control and Abatement of Air Pollution prior to the issuance of the permit.

3. Each standard shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination thereof. The emission standards may include the level, quantity, rate, or concentration or any combination thereof for each affected pollutant.

4. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued.

b. The emissions rate based on the potential to emit of the emissions unit.

5. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination thereof.

C. Using the significant modification procedures of 9VAC5-80-590, an emissions standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subsections B 1 and B 4 of this section and provided the increased emission levels would not make the source subject to the new source review program.

9VAC5-80-490. Permit content.

A. The following requirements apply to permit content:

1. The board shall include in the permit all applicable requirements for all emissions units

2. The board shall include in the permit applicable requirements that apply to fugitive emissions.

3. Each permit issued under this article shall include the elements listed in subsections B through P of this section.

4. Each acid rain permit (including any draft or proposed acid rain permit) shall contain the following elements:

a. All elements required for a complete acid rain permit application under 9VAC5-80-440, as approved or adjusted by the board;

b. The applicable acid rain emissions limitation for sulfur dioxide; and

c. The applicable acid rain emissions limitation for nitrogen oxides.

5. Each acid rain permit is deemed to incorporate the definitions of terms under 9VAC5-80-370.

B. Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards:

1. The permit shall specify and reference applicable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

2. The permit shall specify and reference the origin of and authority for each term or condition and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

3. If applicable requirements contained in Regulations for the Control and Abatement of Air Pollution allow a determination of an alternative emission limit at a source, equivalent to that contained in Regulations for the Control and Abatement of Air Pollution, to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

C. Each permit shall contain terms and conditions setting out the following elements identifying equipment specifications and operating parameters:

1. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

2. Specifications for air pollution control equipment installed or to be installed.

3. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved.

The information on any specification required in subsections C 1 and 2 may be included in the permit for informational purposes only and does not form an enforceable term or condition of the permit unless: (i) the specification is an applicable federal requirement, (ii) the specification is derived from and necessary to enforce an applicable federal requirement, (iii) the operation of the source contrary to the specification would violate an applicable federal requirement, or (iv) the owner voluntarily takes the specification as a state enforceable term or condition of the permit pursuant to 9VAC5-80-300.

D. Each permit shall contain a condition setting out the expiration date, reflecting a fixed term of five years.

E. Each permit shall contain terms and conditions setting out the following requirements with respect to monitoring:

1. All emissions monitoring and analysis procedures or test methods required under the applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods promulgated pursuant to § 504(b) or § 114(a)(3) of the federal Clean Air Act concerning compliance monitoring, including enhanced compliance monitoring. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specific monitoring or testing is adequate to assure compliance at least to the same extent as the applicable requirements relating to monitoring or testing that are not included in the permit as a result of such streamlining.

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subsection F 1 a of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of subsection E 2 of this section.

3. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

F. The following requirements concerning recordkeeping and reporting apply:

1. To meet the requirements of subsection E of this section with respect to recordkeeping, the permit shall contain terms and conditions setting out all applicable recordkeeping requirements and requiring, where applicable, the following:

a. Records of monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements.

(2) The date(s) analyses were performed.

(3) The company or entity that performed the analyses.

(4) The analytical techniques or methods used.

(5) The results of such analyses.

(6) The operating conditions existing at the time of sampling or measurement.

b. Retention of records of all monitoring data and support information for at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

2. To meet the requirements of subsection E of this section with respect to reporting, the permit shall contain terms and conditions setting out all applicable reporting requirements and requiring the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 9VAC5-80-430 G.

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The board shall define "prompt" in the permit condition in relation to (i) the degree and type of deviation likely to occur and (ii) the applicable requirements.

G. Each permit shall contain terms and conditions with respect to enforcement that state the following:

1. If any condition, requirement or portion of the permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or

impair the remaining conditions, requirements, or portions of the permit.

2. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the federal Clean Air Act or the Virginia Air Pollution Control Law or both and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. The permit may be modified, revoked, reopened, and reissued, or terminated for cause as specified in 9VAC5-80-490 L, 9VAC5-80-640 and 9VAC5-80-660. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

5. The permit does not convey any property rights of any sort, or any exclusive privilege.

6. The permittee shall furnish to the board, within a reasonable time, any information that the board may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the board copies of records required to be kept by the permit and, for information claimed to be confidential, the permittee shall furnish such records to the board along with a claim of confidentiality.

H. Each permit shall contain a condition setting out the requirement to pay permit fees consistent with Article 2 (9VAC5-80-310 et seq.) of this part.

I. The following requirements concerning emissions trading apply:

1. Each permit shall contain a condition with respect to emissions trading that states the following:

No permit revision shall be required, under any federally approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

2. Each permit shall contain the following terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases within the permitted facility, to the extent that Regulations for the Control and Abatement of Air Pollution provide for trading such increases and decreases without a case-by-case approval of each emissions trade:

a. All terms and conditions required under this section except subsection N shall be included to determine compliance.

b. The permit shield described in 9VAC5-80-500 shall extend to all terms and conditions that allow such increases and decreases in emissions.

c. The owner shall meet all applicable requirements including the requirements of this article.

J. Each permit shall contain terms and conditions setting out requirements with respect to reasonably anticipated operating scenarios when identified by the source in its application and approved by the board. Such requirements shall include but not be limited to the following:

1. Contemporaneously with making a change from one operating scenario to another, the source shall record in a log at the permitted facility a record of the scenario under which it is operating.

2. The permit shield described in 9VAC5-80-500 shall extend to all terms and conditions under each such operating scenario.

3. The terms and conditions of each such alternative scenario shall meet all applicable requirements including the requirements of this article.

K. Consistent with subsections E and F of this section, each permit shall contain terms and conditions setting out the following requirements with respect to compliance:

1. Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required in a permit condition to be submitted to the board shall contain a certification by a responsible official that meets the requirements of 9VAC5-80-430 G.

2. Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the owner shall allow the board to perform the following:

a. Enter upon the premises where the source is located or emissions-related activity is conducted, or where records must be kept under the terms and conditions of the permit.

b. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of the permit.

c. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.

d. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

3. A schedule of compliance consistent with 9VAC5-80-440 I.

4. Progress reports consistent with an applicable schedule of compliance and 9VAC5-80-440 I to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the board. Such progress reports shall contain the following:

a. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved.

b. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

5. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

a. The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the board) of submissions of compliance certifications.

b. In accordance with subsection E of this section, a means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

c. A requirement that the compliance certification include the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(1) The identification of each term or condition of the permit that is the basis of the certification.

(2) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under subsection E of this section. If necessary, the owner or operator shall also identify any other material information that must be included in the certification to comply with § 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information.

(3) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in 9VAC5-80-110 K 5 c (2). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exception to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred.

(4) Such other facts as the board may require to determine the compliance status of the source.

d. All compliance certifications shall be submitted by the permittee to the administrator as well as to the board.

6. Such other provisions as the board may require.

L. Each permit shall contain terms and conditions setting out the following requirements with respect to reopening the permit prior to expiration:

1. The permit shall be reopened by the board if additional applicable federal requirements become applicable to an affected source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to 9VAC5-80-430 F.

2. The permit shall be reopened if the board or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The permit shall be reopened if the administrator or the board determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

4. The permit shall be reopened if additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

5. The permit shall not be reopened by the board if additional applicable state requirements become applicable to an affected source prior to the expiration date established under subsection D of this section.

M. The permit shall contain terms and conditions pertaining to other requirements as may be necessary to ensure compliance with Regulations for the Control and Abatement of Air Pollution, the Virginia Air Pollution Control Law and the federal Clean Air Act.

N. The following requirements concerning federal enforceability apply:

1. All terms and conditions in a permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal Clean Air Act, except as provided in subsection N 2 of this section.

2. The board shall specifically designate as being only state-enforceable any terms and conditions included in the permit that are not required under the federal Clean Air Act or under any of its applicable federal requirements. Terms and conditions so designated are not subject to the requirements of 9VAC5-80-690 concerning review of proposed permits by EPA and draft permits by affected states.

3. The board may specifically designate as state enforceable any applicable state requirement that has been submitted to the administrator for review to be approved as part of the implementation plan and that has not yet been approved. The permit shall specify that the provision will become federally enforceable upon approval of the provision by the administrator and through an administrative permit amendment.

O. Each permit shall include requirements with respect to allowances held by the source under Title IV of the federal Clean Air Act or 40 CFR Part 73. Such requirements shall include the following:

1. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the federal Clean Air Act or 40 CFR Part 73.

2. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program provided that such increases do not require a permit revision under any other applicable federal requirement.

3. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

4. Any such allowance shall be accounted for according to the procedures established in 40 CFR Part 73.

P. The following requirements concerning annual compliance certification reports apply:

1. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and to the board, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90.

2. The submission of complete compliance certifications in accordance with subsection A of this section and 40 CFR Part 75 shall be deemed to satisfy the requirement to submit compliance certifications under 9VAC5-80-490 K 5 c with regard to the acid rain portion of the source's federal operating permit.

9VAC5-80-500. Permit shield.

A. The board shall expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with all applicable

requirements in effect as of the date of permit issuance and as specifically identified in the permit.

B. The permit shield shall cover only the following:

1. Applicable requirements that are covered by terms and conditions of the permit.

2. Any other applicable requirement specifically identified as being not applicable to the source, provided that the permit includes that determination.

C. Each affected unit operated in accordance with the acid rain permit that governs the unit and that was issued in compliance with Title IV of the federal Clean Air Act, as provided in the acid rain program regulations shall be deemed to be operating in compliance with the acid rain program, except as provided in 9VAC5-80-420 G 6.

D. Nothing in this section or in any permit issued under this article shall alter or affect the following:

1. The provisions of § 303 of the federal Clean Air Act (emergency orders), including the authority of the administrator under that section.

2. The liability of an owner for any violation of applicable requirements prior to or at the time of permit issuance.

3. The ability to obtain information from a source by the (i) administrator pursuant to § 114 of the federal Clean Air Act (inspections, monitoring, and entry); (ii) board pursuant to § 10.1-1314 or 10.1-1315 of the Virginia Air Pollution Control Law or (iii) department pursuant to § 10.1-1307.3 of the Virginia Air Pollution Control Law.

4. The applicable federal requirements of the acid rain program consistent with § 408(a) of the federal Clean Air Act.

9VAC5-80-510. Action on permit application.

A. The board shall take final action on each permit application (including a request for permit modification or renewal) as follows:

1. The board shall issue or deny all permits in accordance with the requirements of this article and this section, including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by 9VAC5-80-660 C.

2. For permit revisions, as required by the provisions of 9VAC5-80-500 through 9VAC5-80-630.

B. A permit, permit modification, or renewal may be issued only if all of the following

conditions have been met:

1. The board has received a complete application for a permit, permit modification, or permit renewal.

2. Except for modifications qualifying for minor permit modification procedures under 9VAC5-80-570 or 9VAC5-80-580, the board has complied with the requirements for public participation under 9VAC5-80-670.

3. The board has complied with the requirements for notifying and responding to affected states under 9VAC5-80-690.

4. The conditions of the permit provide for compliance with all applicable requirements, the requirements of Article 2 (9VAC5-80-310 et seq.) of this part, and the requirements of this article.

5. The administrator has received a copy of the proposed permit and any notices required under 9VAC5-80-690 A and B and has not objected to issuance of the permit under 9VAC5-80-690 C within the time period specified therein.

C. The issuance of the acid rain portion of the federal operating permit shall be as follows:

1. After the close of the public comment period, the board shall incorporate all necessary changes and issue or deny a proposed acid rain permit.

2. The board shall submit the proposed acid rain permit or denial of a proposed acid rain permit to the administrator in accordance with 9VAC5-80-690, the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

3. Action by the administrator shall be as follows:

a. Following the administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the board or, under 9VAC5-80-690 C, the administrator shall incorporate any required changes and issue or deny the acid rain permit in accordance with 9VAC5-80-490 and 9VAC5-80-500.

b. No acid rain permit (including a draft or proposed permit) shall be issued unless the administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

4. Permit issuance deadlines and effective dates shall be as follows:

a. The board shall issue an acid rain permit to each affected source whose designated representative submitted in accordance with 9VAC5-80-430 G a timely and complete acid rain permit application by January 1, 1996 that meets the requirements of this article. The permit shall be issued by the effective date specified in subsection C 4 c

of this section.

b. Not later than January 1, 1999, the board shall reopen the acid rain permit to add the acid rain program nitrogen oxides requirements, provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides in accordance with 9VAC5-80-430 G. Such reopening shall not affect the term of the acid rain portion of a federal operating permit.

c. Each acid rain permit issued in accordance with subsection 4 a of this subsection shall take effect by the later of January 1, 1998, or, where the permit governs a unit under 9VAC5-80-380 A 3, the deadline for monitor certification under 40 CFR Part 75.

d. Both the acid rain draft and final permit shall state that the permit applies on and after January 1, 2000. The draft and final permit shall also specify which applicable requirements are effective prior to January 1, 2000 and the effective date of those applicable requirements.

e. Each acid rain permit shall have a term of five years commencing on its effective date.

f. An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

5. Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the federal operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

6. Invalidation of the acid rain portion of a federal operating permit shall not affect the continuing validity of the rest of the operating permit, nor shall invalidation of any other portion of the operating permit affect the continuing validity of the acid rain portion of the permit.

D. The board shall take final action on each permit application (including a request for a permit modification or renewal) no later than 18 months after a complete application is received by the board, except in cases where a public hearing to provide the opportunity for interested persons to contest the application is granted pursuant to 9VAC5-80-35. The board will review any request made under 9VAC5-80-670 E 2, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter. The initial permits issued under this article shall be issued by the effective date specified in subsection C 4 c of this section.

E. Issuance of permits under this article shall not take precedence over or interfere with the issuance of preconstruction permits under the new source review program.

F. The board shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory

provisions) as follows. The board shall send this statement to the administrator and to any other person who requests it.

1. The statement of basis shall briefly set forth significant factual, legal, and policy considerations on which the board relied in issuing or denying the draft permit.

2. The statement of basis shall include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

3. The board shall submit to the administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the federal operating permit that may affect the draft acid rain permit.

G. Within five days after receipt of the issued permit, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the board upon request.

9VAC5-80-520. Transfer of permits.

A. No person shall transfer a permit from one location to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of an affected source, the new owner shall comply with any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer and shall comply with the requirements of 9VAC5-80-560.

C. In the case of a name change of an affected source, the owner shall comply with any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change and shall comply with the requirements of 9VAC5-80-560.

9VAC5-80-530. Permit renewal and expiration.

A. Permits being renewed shall be subject to the same procedural requirements, including those for public participation, affected state and EPA review, that apply to initial permit issuance under this article.

B. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with 9VAC5-80-430.

C. If the board fails to act in a timely way on a permit renewal, the administrator may invoke his authority under § 505(e) of the federal Clean Air Act to terminate or revoke and reissue the permit.

9VAC5-80-540. Permanent shutdown for emissions trading.

The shutdown of an emissions unit is not creditable for purposes of emissions trading or exempt under 9VAC5-80-360 C 3 unless a decision concerning shutdown has been made pursuant 9VAC5-20-220.

9VAC5-80-550. Changes to permits.

A. Changes to emissions units that pertain to applicable federal requirements at a source with a permit issued under this article shall be made as specified under subsections B and C of this section. Changes may be initiated by the permittee as specified in subsection B of this section or by the board or the administrator as specified in subsection C of this section. Changes to emissions units that pertain to applicable state requirements at a source with a permit issued under this article shall be made as specified under subsection E of this section.

B. The following requirements apply with respect to changes initiated by the permittee:

1. With regard to emissions units other than affected units, the permittee may initiate a change to a permit by requesting an administrative permit amendment, a minor permit modification or a significant permit modification. The requirements for these permit revisions can be found in 9VAC5-80-560 through 9VAC5-80-590.

2. With regard to affected units, the permittee may initiate a change to a permit by requesting a permit modification, fast-track modification, administrative permit amendment or automatic permit amendment. The requirements for these permit revisions can be found in 9VAC5-80-600 through 9VAC5-80-630.

3. A request for a change by a permittee shall include a statement of the reason for the proposed change.

4. A permit revision may be submitted for approval at any time.

5. No permit revision shall affect the term of the acid rain permit to be revised.

6. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.

7. The terms of the acid rain permit shall apply while the permit revision is pending.

8. Any determination or interpretation by the state (including the board or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the administrator in accordance with 9VAC5-80-690 C as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with 9VAC5-80-620.

9. The standard requirements of 9VAC5-80-420 shall not be modified or voided by a permit revision.

10. Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under 9VAC5-80-460, § 407 of the federal Clean Air Act and 40 CFR Part 76.

11. For permit revisions not described in 9VAC5-80-600 and 9VAC5-80-610, the board may, in its discretion, determine which of these sections is applicable.

C. The administrator or the board may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-640.

D. Changes to permits shall not be used to extend the term of the permit.

E. The following requirements apply with respect to changes at a source and applicable state requirements:

1. Changes at a source that pertain only to applicable state requirements shall be exempt from the requirements of 9VAC5-80-560 through 9VAC5-80-630.

2. The permittee may initiate a change pertaining only to applicable state requirements (i) if the change does not violate applicable requirements and (ii) if applicable, the requirements of the new source review program have been met.

3. Incorporation of permit terms and conditions into a permit issued under this article shall be as follows:

a. Permit terms and conditions pertaining only to applicable state requirements and issued under the new source review program shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

b. Permit terms and conditions for changes to emissions units subject only to applicable state requirements and exempt from the requirements of the new source review program shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

4. The source shall provide contemporaneous written notice to the board of the change. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable state requirement that would apply as a result of the change.

5. The change shall not qualify for the permit shield under 9VAC5-80-500.

9VAC5-80-560. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Requirement for more frequent monitoring or reporting by the permittee.

4. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9VAC5-80-520 have been fulfilled.

5. Incorporation into the permit of the requirements of permits issued under the new source review program when the new source review program meets (i) procedural requirements substantially equivalent to the requirements of 9VAC5-80-670 and 9VAC5-80-690 that would be applicable to the change if it were subject to review as a permit modification, and (ii) compliance requirements substantially equivalent to those contained in 9VAC5-80-490.

6. Change in the enforceability status from state-only requirements to federally enforceable requirements for provision that have been approved through rulemaking by the administrator to be a part of the implementation plan.

B. Administrative permit amendments shall be made according to the following procedures:

1. The board shall take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board shall incorporate the changes without providing notice to the public or affected states under 9VAC5-80-670 and 9VAC5-80-690. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The board shall submit a copy of the revised permit to the administrator.

4. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

C. The board shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield provisions of 9VAC5-80-500 for amendments made pursuant to subsection A 5 of this section.

9VAC5-80-570. Minor permit modifications.

A. Minor permit modification procedures shall be used only for those permit modifications that:

1. Do not violate any applicable requirement;

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not Title I modifications; and

6. Are not required to be processed as a significant modification under 9VAC5-80-590 or as an administrative permit amendment under 9VAC5-80-560.

B. Notwithstanding subsection A of this section and 9VAC5-80-580 A, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in Regulations for the Control and Abatement of Air Pollution or a federally-approved program.

C. An application requesting the use of minor permit modification procedures shall meet the requirements of 9VAC5-80-440 for the modification proposed and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9VAC5-80-430 G, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used.

D. Within five working days of receipt of a permit modification application that meets the requirements of subsection C of this section, the board shall meet its obligation under 9VAC5-80-690 A 1 and B 1 to notify the administrator and affected states of the requested permit modification. The board shall promptly send any notice required under 9VAC5-80-690 B 2 to the administrator. The public participation requirements of 9VAC5-80-670 shall not extend to minor permit modifications.

E. The timetable for issuance of permit modifications shall be as follows:

1. The board may not issue a final permit modification until after the administrator's 45-day review period or until the administrator has notified the board that he will not object to issuance of the permit modification, whichever occurs first, although the board can approve the permit modification prior to that time.

2. Within 90 days of receipt by the board of an application under minor permit modification procedures or 15 days after the end of the 45-day review period under 9VAC5-80-600 C, whichever is later, the board shall do one of the following:

a. Issue the permit modification as proposed.

b. Deny the permit modification application.

c. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures.

d. Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by 9VAC5-80-690 A.

F. The following requirements apply with respect to the ability of an owner to make minor permit modification changes:

1. The owner may make the change proposed in the minor permit modification application immediately after the application is filed.

2. After the change under subsection F 1 of this section is made, and until the board takes any of the actions specified in subsection E of this section, the source shall comply with both the applicable federal requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subsection F 2 of this section, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during

this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

G. The permit shield under 9VAC5-80-500 shall not extend to minor permit modifications.

9VAC5-80-580. Group processing of minor permit modifications.

A. Group processing of modifications may be used only for those permit modifications that meet both of the following:

1. Permit modifications that meet the criteria for minor permit modification procedures under 9VAC5-80-570 A.

2. Permit modifications that collectively are below the threshold level as follows: 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source in 9VAC5-80-370, or five tons per year, whichever is least.

B. An application requesting the use of group processing procedures shall meet the requirements of 9VAC5-80-440 for the proposed modifications and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9VAC5-80-430 G, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

4. A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subsection A 2 of this section.

5. Certification, consistent with 9VAC5-80-430 G, that the source has notified the administrator of the proposed modification. Such notification need contain only a brief description of the requested modification.

6. Completed forms for the board to use to notify the administrator and affected states as required under 9VAC5-80-690.

C. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of the pending applications for the source equals or exceeds the threshold level set under subsection A 2 of this section, whichever is earlier, the board promptly shall meet its obligation under 9VAC5-80-690 A 1 and B 1 to notify the

administrator and affected states of the requested permit modifications. The board shall send any notice required under 9VAC5-80-690 B 2 to the administrator. The public participation requirements of 9VAC5-80-670 shall not extend to group processing of minor permit modifications.

D. The provisions of 9VAC5-80-570 E shall apply to modifications eligible for group processing, except that the board shall take one of the actions specified in 9VAC5-80-570 E 1 through E 4 within 180 days of receipt of the application or 15 days after the end of the 45-day review period under 9VAC5-80-690 C, whichever is later.

E. The provisions of 9VAC5-80-570 F shall apply to modifications eligible for group processing.

F. The permit shield under 9VAC5-80-500 shall not extend to minor permit modifications.

9VAC5-80-590. Significant modification procedures.

A. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications under 9VAC5-80-570 or 9VAC5-80-580 or as administrative amendments under 9VAC5-80-560. Significant modification procedures shall be used for those permit modifications that:

1. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

2. Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts made under 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources), or a visibility or increment analysis carried out under this part.

3. Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification.

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act (early reduction of hazardous air pollutants).

B. An application for a significant permit modification shall meet the requirements of 9VAC5-80-430 and 9VAC5-80-440 for permit issuance and renewal for the modification

proposed and shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Completed forms for the board to use to notify the administrator and affected states as required under 9VAC5-80-690.

C. The provisions of 9VAC5-80-690 shall be carried out for significant permit modifications in the same manner as they would be for initial permit issuance and renewal.

D. The provisions of 9VAC5-80-670 shall apply to applications made under this section.

E. The board shall take final action on significant permit modifications within nine months after receipt of a complete application.

F. The owner shall not make the change applied for in the significant modification application until the modification is approved by the board under subsection E of this section.

G. The provisions of 9VAC5-80-500 shall apply to changes made under this section.

9VAC5-80-600. Permit modifications for affected units.

A. The following are permit modifications for affected units:

1. Relaxation of an excess emission offset requirement after approval of the offset plan by the administrator.

2. Incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period.

3. Determinations concerning failed repowering projects under 9VA 5-80-460 F 1 and F 3.

4. At the option of the designated representative submitting the permit revision, the permit revisions listed in 9VAC5-80-610 A.

B. An application for a permit modification for an affected unit shall meet the requirements of 9VAC5-80-430 and 9VAC5-80-440 for permit issuance and renewal for the modification proposed.

C. The provisions of 9VAC5-80-690 shall be carried out for permit modifications for affected units in the same manner as they would be for initial permit issuance and renewal.

D. The provisions of 9VAC5-80-670 shall apply to applications made under this section.

E. The board shall take final action on permit modifications for affected units within nine months after receipt of a complete application.

F. The owner shall not make the change applied for under this section until the modification is approved by the board under subsection E of this section.

9VAC5-80-610. Fast-track modifications for affected units.

A. The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this section or permit modifications for affected units under 9VAC5-80-600:

1. Incorporation of a compliance option under 9VAC5-80-450 that the designated representative did not submit for approval and comment during the permit issuance process; except that incorporation of a reduced utilization plan that was not submitted during the permit issuance process, that does not designate a compensating unit, and that meets the requirements of 40 CFR 72.43 may use the administrative permit amendment procedures under 40 CFR 72.83.

2. Changes in a substitution plan or reduced utilization plan that result in the addition of a new substitution unit or a new compensating unit under the plan.

3. Addition of a nitrogen oxides averaging plan to a permit.

4. Changes in a Phase I extension plan, a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension; and

5. Changes in a thermal energy plan that result in any addition or subtraction of a replacement unit or any change affecting the number of allowances transferred for the replacement of thermal energy.

B. The following requirements apply with respect to service, notification, and public participation:

1. The designated representative shall serve a copy of the fast-track modification on the following at least five days prior to the public comment period specified in subsections B 2 and B 3 of this section:

(a) The administrator,

(b) The board,

(c) Affected states, and

(d) Persons on a permit mailing list who have requested information on the opportunity for public comment.

2. Within five business days of serving copies of the fast-track modification under subsection B 1 of this section, the designated representative shall give public notice of the fast-track modification by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice. The notice shall contain the information listed in 9VAC5-80-670 C 1 a through C 1 h. The notice shall also state that a copy of the fast-track modification is available (i) from the designated representative and (ii) for public inspection during the entire public comment period at the regional office.

3. The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the board and to the designated representative.

C. The timetable for issuance shall be as follows:

1. Within 30 days of the close of the public comment period, the board shall consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification.

2. A fast-track modification shall be effective immediately upon approval and issuance, in accordance with 9VAC5-80-510 B 5.

9VAC5-80-620. Administrative permit amendments for affected units.

A. The following permit revisions are administrative permit amendments for affected units:

1. Activation of a compliance option conditionally approved by the board, provided that all requirements for activation under 9VAC5-80-450 C and 9VAC5-80-460 are met.

2. Changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted to the administrator in accordance with Subpart B of 40 CFR Part 72.

3. Correction of typographical errors.

4. Changes in names, addresses, or telephone or facsimile numbers.

5. Changes in the owners or operators, provided that a new certificate of representation is submitted within 30 days to the administrator in accordance with Subpart B of 40 CFR Part 72.

6. Termination of a compliance option in the permit, provided that all requirements for termination under 9VAC5-80-450 D shall be met and this procedure shall

not be used to terminate a repowering plan after December 31, 1999.

7. Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification, provided that they are in accordance with 9VAC5-80-420.

8. The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of the 40 CFR Part 76 are met.

9. The addition of a NO_X early election plan that was approved by the administrator under 40 CFR 76.8.

10. The addition of an exemption for which the requirements have been met under 40 CFR 72.7 or 72.8 or which was approved by the board; and

11. Incorporation of changes that the administrator has determined to be similar to those in subsections A 1 through A 8 of this section.

B. The following provisions shall apply.

1. The board shall take final action on an administrative permit amendment within 60 days, or, for the addition of an alternative emissions limitation demonstration period, within 90 days, of receipt of the requested amendment and may take such action without providing prior public notice. The source may implement any changes in the administrative permit amendment immediately upon submission of the requested amendment, provided that the requirements of subsection A of this section are met.

2. The board may, on its own motion, make an administrative permit amendment at least 30 days after providing notice to the designated representative of the amendment and without providing any other prior public notice.

3. The board shall designate the permit revision as having been made as an administrative permit amendment. The board shall submit the revised portion of the permit to the administrator.

4. An administrative amendment shall not be subject to the provisions for review by the administrator applicable to a permit modification under 40 CFR 72.81.

9VAC5-80-630. Automatic permit amendments for affected units.

The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit's acid rain permit by operation of law without any further review:

A. Upon recordation by the administrator under 40 CFR Part 73, all allowance allocations to, transfers to, and deductions from an affected unit's allowance tracking system account.

B. Incorporation of an offset plan that has been approved by the administrator under 40 CFR Part 77.

9VAC5-80-640. Reopening for cause.

A. A permit shall be reopened and revised under any of the conditions stated in 9VAC5-80-490 L.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

D. In reopening an acid rain permit, the board shall issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary.

E. The following requirements apply with respect to reopenings for cause by EPA:

1. If the administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subsection A of this section, the administrator shall notify the board and the permittee of such finding in writing.

2. The board shall, within 90 days after receipt of such notification, forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the board must require the permittee to submit additional information.

3. The administrator shall review the proposed determination from the board within 90 days of receipt.

4. The board shall have 90 days from receipt of an objection by the administrator to resolve any objection that he makes and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

5. If the board fails to submit a proposed determination pursuant to subsection D 2 of this section or fails to resolve any objection pursuant to subsection D 4 of this section, the administrator shall terminate, modify, or revoke and reissue the permit after taking the following actions:

a. Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in subsections D 1 through D 4 of this section.

b. Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

9VAC5-80-650. Malfunction.

A. A malfunction constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the conditions of subsection B of this section are met.

B. The affirmative defense of malfunction shall be demonstrated by the permittee through properly signed, contemporaneous operating logs, or other relevant evidence that show the following:

1. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.

2. The permitted facility was at the time being properly operated.

3. During the period of the malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.

4. The permittee notified the board of the malfunction within two working days following the time when the emission limitations were exceeded due to the malfunction. This notification shall include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notification may be delivered either orally or in writing. The notification may be delivered by electronic mail, facsimile transmission, telephone, telegraph, or any other method that allows the permittee to comply with the deadline. This notification fulfills the requirements of 9VAC5-80-490 F 2 b to report promptly deviations from permit requirements. This notification does not release the permittee from the malfunction reporting requirements under 9VAC5-20-180 C.

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

9VAC5-80-660. Enforcement.

A. The following general requirements apply:

1. Pursuant to § 10.1-1322 of the Code of Virginia, failure to comply with any condition of a permit shall be considered a violation of the Virginia Air Pollution Control Law.

2. A permit may be revoked or terminated prior to its expiration date if the

owner does any of the following:

a. Knowingly makes material misstatements in the permit application or any amendments thereto.

b. Violates, fails, neglects or refuses to comply with (i) the terms or conditions of the permit, (ii) any applicable requirements, or (iii) the applicable provisions of this article.

3. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation or termination contained in subsection A 2 of this section or for any other violations of these regulations.

B. The following requirements apply with respect to penalties:

1. An owner who violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1316 of the Virginia Air Pollution Control Law.

2. Any owner who knowingly violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

3. Any owner who knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

C. The following requirements apply with respect to appeals:

1. The board shall notify the applicant in writing of its decision, with its reasons, to suspend, revoke or terminate a permit.

2. Appeal from any decision of the board under subsection C 1 of this section may be taken pursuant to 9VAC5-20-90, § 10.1-1318 of the Virginia Air Pollution Control Law, and the Administrative Process Act.

3. Appeals of the acid rain portion of a federal operating permit issued by the board that do not challenge or involve decisions or actions of the administrator under §§ 407 and 410 of the federal Clean Air Act and the acid rain program regulations shall be conducted according to the procedures in the Administrative Process Act. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR Part 78 and § 307 of the federal Clean Air Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations

of whether a technology is a qualifying repowering technology.

4. No administrative appeal or judicial appeal of the acid rain portion of a federal operating permit shall be allowed more than 90 days following respectively issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

5. The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

6. No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

a. The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

b. Any standard requirement under 9VAC5-80-420;

c. The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR Part 75;

d. Uncontested provisions of the decision on appeal; and

e. The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.

7. The board shall serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any federal operating permit or denial of an acid rain portion of any federal operating permit within 30 days of the filing of the appeal.

8. The board shall serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator shall have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with 9VAC5-80-690.

D. The existence of a permit under this article shall constitute a defense to a violation of any applicable requirement if the permit contains a condition providing the permit shield as specified in 9VAC5-80-500 and if the requirements of 9VAC5-80-500 have been met. The existence of a permit shield condition shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of other governmental entities having jurisdiction. Otherwise, the existence of a permit under this article shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or Regulations for the Control and Abatement of Air Pollution and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

E. The following requirements apply with respect to inspections and right of entry:

1. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law and 9VAC5-20-150, has the authority to require that air pollution records and reports be made available upon request and to require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of the permits issued under this article.

2. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law, has the authority, upon presenting appropriate credentials to the owner, to do the following:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in the Commonwealth; and

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the board or its representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the board shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection.

F. The board may enforce permits issued under this article through the use of other enforcement mechanisms such as consent orders and special orders. The procedures for using these mechanisms are contained in 9VAC5-20-20 and 9VAC5-20-30 and in §§ 10.1-1307 D, 10.1-1309, and 10.1-1309.1 of the Virginia Air Pollution Control Law.

9VAC5-80-670. Public participation.

A. Except for modifications qualifying for minor permit modification procedures and administrative permit amendments, draft permits for initial permit issuance, significant modifications, and renewals shall be subject to a public comment period of at least 30 days. The board shall notify the public using the procedures in subsection B of this section.

B. The board shall notify the public of the draft permit or draft permit modification (i) by advertisement in a newspaper of general circulation in the area where the source is located and (ii) through a notice to persons on a permit mailing list who have requested such information of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section.

C. The following requirements apply with respect to content of the public notice and availability of information:

1. The notice shall include, but not be limited to, the following:

a. The source name, address and description of specific location.

b. The name and address of the permittee.

c. The name and address of the regional office processing the permit.

d. The activity or activities for which the permit action is sought.

e. The emissions change that would result from the permit issuance or modification.

f. The name, address, and telephone number of a department contact from whom interested persons may obtain additional information, including copies of the draft permit or draft permit modification, the application, and all relevant supporting materials, including the compliance plan.

g. A brief description of the comment procedures required by this section.

h. A brief description of the procedures to be used to request a hearing or the time and place of the public hearing if the board determines to hold a hearing under subsection E 3 of this section.

2. Information on the permit application (exclusive of confidential information under 9VAC5-20-150), as well as the draft permit or draft permit modification, shall be available for public inspection during the entire public comment period at the regional office.

D. The board shall provide such notice and opportunity for participation by affected states as is provided for by 9VAC5-80-690.

E. The following requirements apply with respect to opportunity for public hearing:

1. The board shall provide an opportunity for a public hearing as described in subdivisions 2 through 6 of this subsection.

2. Following the initial publication of the notice required under subsection B of this section, the board shall receive written requests for a public hearing to contest the draft permit or draft permit modification pursuant to the requirements of 9VAC5-80-35. In order to be considered, the request shall be submitted no later than the end of the comment period. Request for a public hearing shall contain the following information:

a. The name, mailing address and telephone number of the requester.

b. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person).

c. The reason why a public hearing is requested.

d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the draft permit or draft permit modification, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question.

e. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

3. The board will review any request made under subdivision 2 of this subsection, and will take final action on the request as provided in 9VAC5-80-510 D.

F. The board shall keep (i) a record of the commenters and (ii) a record of the issues raised during the public participation process so that the administrator may fulfill the administrator's obligation under § 505(b)(2) of the federal Clean Air Act to determine whether a citizen petition may be granted. Such records shall be made available to the public upon request.

9VAC5-80-680. Operational flexibility.

A. The board shall allow, under conditions specified in this section, operational flexibility changes at a source that do not require a revision to be made to the permit in order for the changes to occur. Such changes shall be classified as follows: (i) those that contravene an express permit term, or (ii) those that are not addressed or prohibited by the permit. The conditions under which the board shall allow these changes to be made are specified in subsections B and C of this section, respectively.

B. The following requirements apply with respect to changes that contravene an express permit term:

1. The following general requirements apply:

a. The board shall allow a change at an affected source that changes a permit condition with the exception of the following:

(1) A Title I modification or a change subject to requirements under Title IV.

(2) A change that would exceed the emissions allowable under the permit.

(3) A change that would violate applicable requirements.

(4) A change that would contravene federally or state enforceable permit terms or conditions or both that are monitoring (including test methods), recordkeeping, reporting, compliance schedule dates or compliance certification requirements.

b. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

c. The owner, board and the administrator shall attach the notice described in subsection B 1 b of this section to their copy of the relevant permit.

d. The permit shield under 9VAC5-80-500 shall not extend to any change made pursuant to subsection B 1 of this section.

2. The following requirements apply with respect to emission trades within permitted facilities provided for in Regulations for the Control and Abatement of Air Pollution:

a. With the exception of the changes listed in subsection B 1 a of this section, the board shall allow permitted sources to trade increases and decreases in emissions within the permitted facility (i) where Regulations for the Control and Abatement of Air Pollution provide for such emissions trades without requiring a permit revision and (ii) where the permit does not already provide for such emissions trading.

b. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall include such information as may be required by the provision in Regulations for the Control and Abatement of Air Pollution authorizing the emissions trade, including at a minimum the name and location of the facility, when the proposed change will occur, a description of the proposed change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of Regulations for the Control and Abatement of Air Pollution, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in Regulations for the Control and Abatement of Air Pollution and which provide for the emissions trade.

c. The permit shield described in 9VAC5-80-500 shall not extend to any change made under subsection B 2 of this section. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of Regulations for the Control and Abatement of Air Pollution.

3. The following requirements apply with respect to emission trades within affected sources to comply with an emissions cap in the permit:

a. If a permit applicant requests it, the board shall issue permits that

contain terms and conditions, including all terms required under 9VAC5-80-490 to determine compliance, allowing for the trading of emissions increases and decreases within the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable federal requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure that the emissions trades are quantifiable and enforceable. The board shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

b. The board shall not allow a change to be made under subsection B 3 of this section if it is a change listed in subsection B 1 of this section.

c. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

d. The permit shield under 9VAC5-80-500 shall extend to terms and conditions that allow such increases and decreases in emissions.

C. The following requirements apply with respect to changes that are not addressed or prohibited by the permit:

1. The board shall allow the owner to make changes that are not addressed or prohibited by the permit unless the changes are subject to the requirements for Title I modifications or the requirements under Title IV.

2. Each change shall meet all applicable requirements and shall not violate any existing permit term or condition which is based on applicable federal requirements.

3. Sources shall provide contemporaneous written notice to the board and the administrator of each change, except for changes to emissions units deemed insignificant and listed in 9VAC5-80-720 A. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable federal requirement that would apply as a result of the change.

4. The change shall not qualify for the permit shield under 9VAC5-80-500.

5. The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable federal requirement but not otherwise regulated under the permit, and the emissions resulting from those changes.

9VAC5-80-690. Permit review by EPA and affected states.

A. The following requirements apply with respect to transmission of information to the administrator:

1. The board shall provide to the administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit issued under this article.

2. The board shall keep for five years such records and submit to the administrator such information as the administrator may reasonably require to ascertain whether the Virginia program complies with the requirements of the federal Clean Air Act or of 40 CFR Part 70.

B. The following requirements apply with respect to review by affected states:

1. The board shall give notice of each draft permit to any affected state on or before the time that the board provides this notice to the public under 9VAC5-80-670, except to the extent that 9VAC5-80-570 or 9VAC5-80-580 requires the timing of the notice to be different.

2. The board, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under 9VAC5-80-570 or 9VAC5-80-580), shall notify the administrator and any affected state in writing of any refusal by the board to accept recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the reasons why the board will not accept a recommendation. The board shall not be obligated to accept recommendations that are not based on applicable federal requirements or the requirements of this article.

C. The following requirements apply with respect to objections by EPA:

1. No permit for which an application must be transmitted to the administrator under subsection A of this section shall be issued if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

2. Any objection by the administrator under subsection C 1 of this section shall include a statement of the reasons for the objection and a description of the terms and conditions that the permit must include to respond to the objection. The administrator shall provide the permit applicant a copy of the objection.

3. Failure of the board to do any of the following also shall constitute grounds for an objection:

a. Comply with subsection A or B of this section or both.

b. Submit any information necessary to review adequately the proposed permit.

c. Process the permit under the public comment procedures in 9VAC5-80-670 except for minor permit modifications.

4. If, within 90 days after the date of an objection under subsection C 1 of this section, the board fails to revise and submit a proposed permit in response to the objection, the administrator shall issue or deny the permit in accordance with the requirements of 40 CFR Part 71.

D. The following requirements apply with respect to public petitions to the administrator:

1. If the administrator does not object in writing under subsection C of this section, any person may petition the administrator within 60 days after the expiration of the 45-day review period for the administrator to make such objection.

2. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in 9VAC5-80-670, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

3. If the administrator objects to the permit as a result of a petition filed under subsection D 1 of this section, the board shall not issue the permit until the objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection by the administrator.

4. If the board has issued a permit prior to receipt of an objection by the administrator under subsection D 1 of this section, the administrator shall modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 9VAC5-80-640 E 4 or E 5 a and b except in unusual circumstances, and the board may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

E. No permit (including a permit renewal or modification) shall be issued by the board until affected states and the administrator have had an opportunity to review the proposed permit as required under this section.

9VAC5-80-700. Voluntary inclusions of additional state-only requirements as applicable state requirements in the permit.

A. Upon the request of an applicant, any requirement of any regulation of the board (other than any requirement that is a federal applicable requirement) may be included as an applicable state requirement in a permit issued under this article.

B. If the applicant chooses to make a request under subsection A of this section, the provisions of this article pertaining to applicable state requirements shall apply.

C. The request under subsection A of this section shall be made by including the citation and description of any applicable requirement not defined as such in this article in the permit application submitted to the board under 9VAC5-80-440 E.

9VAC5-80-705. [Repealed.]

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